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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

R E P O R T

ON THE LEGAL FOUNDATION FOR FOREIGN POLICY

& APPENDIX

This report, after being adopted by the Sub-Committee on International Law, on the basis of a draft report prepared by Mr Stanko Nick with the assistance of the Secretariat of the European Commission for Democracy through Law, was approved by the Commission at its 33rd meeting from 12 to 13 December 1997.

A questionnaire (CDL-DI (95) 3) was first drawn up for submission to members, associate members and observers of the Commission. The Rapporteur subsequently considered it necessary to ask certain supplementary questions (CDL-DI (96) 2) to provide further insights into certain matters covered by this study.

The Commission has received replies from the following countries: Albania, Armenia, Austria, Belgium, Bulgaria, Canada, Croatia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Norway, Netherlands, Poland, Portugal, Czech Republic, Romania, Russia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey and Ukraine.

Introduction

The purpose of the report is to present the legal foundations of foreign policy in a large number of States with different legal cultures, in order to take account of that diversity but also - and above all - to identify the principal axes of developments in this sphere. The concept of legal foundations of foreign policy covers two different problems:

- first, the legal rules which must be observed when the directions to be taken by foreign policy are determined, and above all the **higher principles which must be observed by the public powers when they define the content of foreign policy**; and

- secondly, the **legal rules concerned with the implementation of foreign policy**, that is to say, the rules which determine the framework within which foreign policy is conducted and especially those relating to the persons responsible for adopting the measures which give concrete form to the general directions to be taken by foreign policy.

The **existence of legal rules capable of influencing the content and direction of foreign policy** is not open to question. Such rules have long existed in international law. Thus principles such as the principle of *pacta sunt servanda*, *lex specialis derogat legi generali*, *lex posterior derogat legi anteriori*, the obligation to settle disputes by peaceful means, the respect of peace and other principles of *jus cogens* have always bound States in the context of foreign policy. The emergence of rules of domestic law designed to regulate the determination of foreign policy, on the other hand, is part of a more recent movement. National sovereignty, the independence of the nation, human rights, democracy and other higher values proclaimed in the constitutional charters of States are beginning to have an increasing impact in this area. It is this **gradual movement towards the subjection of choices in foreign policy to legal rules established in domestic law** that forms the subject-matter of the first part of the report.

Moreover, there have also been developments in the **legal rules concerned with the division of powers in relation to the implementation of foreign policy**. Traditionally the domain of the executive, foreign policy is beginning to be increasingly the concern of other political actors. The acceleration of globalisation and the increasing integration of different countries in international society has the effect that more and more issues are regulated at a supranational level, in multilateral meetings or international organisations. The influence of foreign policy in domestic law and the life of citizens is becoming more widespread. Citizens can no longer disregard it. Thus a **certain democratisation of the implementation of foreign policy**, with the legislature being increasingly involved, has been the inevitable consequence of the growing interpenetration of the domestic and international legal orders. It is this second evolution in relation to the legal foundations of foreign policy which forms the subject-matter of the second part[1].

1. Determination of the choice of foreign policy by legal rules of domestic law

This movement is associated with the condemnation of absolutist systems and the recognition of the higher value of democracy, human rights and fundamental freedoms and the rule of law. The idea is that there are some rules which must be observed in all situations by those participating in public life, including in the sphere of foreign policy. However, it is not enough to identify legal rules applicable to the definition of foreign policy in texts. It is also necessary to examine whether there are control mechanisms which ensure that these rules are observed. The **existence of legal rules** capable of influencing the content of foreign policy must be combined with mechanisms which ensure that they are **effective**[2].

1.1 The principles which must be observed when the directions to be taken by foreign policy are defined

The replies received from the States which took part in this study prove beyond question that there is a movement towards the consecration of legal rules which bind the content of foreign policy. The **sources of these rules vary**. In a large number of States the fundamental principles which serve to determine the directions to be taken by foreign policy are laid down in the Constitution, while in other States they are found in particular in legislation or even in traditional practices.[3]

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[1] *It should be noted that the examples used to illustrate the report were chosen at random. For a full insight into the subject, reference should be made to the appendix, where the applicable rules are set out on a country-by-country basis.*

[2] *"From a normative aspect, the subjection of external relations to legal rules can scarcely be doubted. It is therefore possible to agree with Carré de Malberg that diplomatic activity is not absolutely legibus soluta and that it is not in every respect above the law. However, it is necessary to accept Paul Reuter's assertion that while the hierarchy of norms is one thing, the sanction of that hierarchy is another matter, because it entails the intervention of the power". See E. ZOLLER, Droit des relations extérieures, PUF 1992, p. 257.*

[3] *This is so of Switzerland, where the majority of the essential axioms of foreign policy (namely solidarity, universality and availability) are not mentioned in the Constitution, while neutrality is not affirmed as a*

As regards the **actual content of the legal rules** which must be observed when foreign policy is defined, we find, first, a wide range of values which are often borrowed from international law, and in particular from *jus cogens*, and which recur systematically in numerous States. Among these values one can mention the rules of good neighbourhood and the three cardinal principles of the existing international system put in place by the U.N Charter, namely the principle of the settlement of international disputes by pacific means alone (article 2 paragraph 3), the principle of abstention from the use of force or threat of force in international relations (article 2 paragraph 4) and the obligation to conform to the resolutions of the U.N. security council in the frame of collective security, according to chapter II of the U.N. Charter. Values such as peace and the development of friendly relations between nations are thus mentioned in a number of Constitutions.

However, there are also other categories of rules which recur systematically, namely those concerning the guarantee of the survival of the State, such as, for example, respect for national sovereignty and the territorial integrity of the State. Certain rules, on the other hand, are peculiar to some States and may be explained by the specific legal traditions of these States. These include, for example, the principle of neutrality[4], non-alignment[5], or comprehensive defense[6].

Lastly, the question of the necessity to respect values such as human rights, democracy and the rule of law in foreign policy has also arisen, in the light of the fundamental place which these principles occupy in numerous domestic legal orders. The Venice Commission takes the view that States should be encouraged to respect these values in the framework of their foreign policy. The regard for these values constitutes an integral part of the new constitutional order.

1.1.1 Rules borrowed from international law

First of all, the reference to peace and the condemnation of war as a method of resolving disputes is found in a large number of national Constitutions. Thus, according to Article 2.2 of its Constitution, "Greece pursues the strengthening of peace and justice and the development of friendly relations between nations". Peace is also stated to be a general objective of foreign policy in the Constitution of the following countries: Germany, Georgia, Hungary, Italy, Netherlands, Spain, Kyrgyzstan, Estonia, Malta, Romania and Slovakia. Admittedly, the classification of this principle as a legal rule is not established. Where there is a risk to their survival and their integrity States may still employ force. Moreover, it seems difficult to subject the assessment of such a need to judicial control. However, it is significant that peace as a general objective of foreign policy should be enshrined at the highest level in domestic law.

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general principle (see also p. 5).

[4] *For example in Switzerland.*

[5] *For example in Malta.*

[6] *For example in Austria.*

Furthermore, in certain cases **more specific rules give concrete form to this desire to maintain peace**. Thus, for example, Article 26.1 of the German Basic Law states that all activities which may jeopardise peaceful international relations, and in particular preparations for military aggression, are unconstitutional. Furthermore, in the interest of promoting peace, it is provided that Germany may become a party to a system of collective security (Article 24 of the Basic Law) and general and obligatory arbitration for the purpose of settling international disputes (Article 24.3 of the Basic Law). In Italy it is also provided that limitations of sovereignty are allowed in order to construct an order of peace and justice between nations.

Other principles of international law are also mentioned in a number of Constitutions. These **principles** include the **people's right to self-determination** (Russia, Slovakia), **respect for established frontiers** (France), the **territorial integrity of other States** (Hungary) and **non-interference in their domestic affairs** (Hungary, Ukraine).[7]

Other Constitutions, on the other hand, instead of repeating the content of the legal rules of international law, simply **require observance of international law as a whole when foreign policy is defined**.

Among the rules of general international law the respect of which may be considered as guaranteed by such a clause are above all those which govern the language of international relations, i.e. diplomatic and consular relations. The fundamental character of these rules has been strongly reaffirmed by the International Court of Justice in the case of the hostages in the american embassy in Teheran. In its decision the Court made a point of stressing that the obligations laid on States by the two Vienna Conventions of 1961 and 1963 on Diplomatic and Consular Relations are of cardinal importance for the maintenance of good relations between States[8].

A constitutional provision requiring observance of international law as a whole in the framework of foreign policy is to be found in the following countries: Armenia, Greece, Hungary, Bulgaria, Kyrgyzstan, Lithuania, Romania, Slovenia. The french Constitution requires in particular observance of the principle *pacta sunt servanda*. In Estonia there is a further reference to normal international practices to resolve issues not resolved in the Constitution, legislation and international law. In the Netherlands the Constitution even requires the public powers to promote the development of international observance of the law. This provision shows the major importance which the Netherlands ascribes to an international order based on universally applicable norms.

1.1.2 Rules associated with the traditions peculiar to certain States

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[7] *However, Hungary confers fundamental importance on the protection of minorities living in neighbouring countries. The violation of human rights cannot therefore be regarded as the domestic affair of a country.*

[8] *International Court of Justice, 24 may 1980, Case concerning United States diplomatic and consular staff in Teheran, United States of America v. Iran, R. 1980, p.4.*

Alongside the principles borrowed from international law, in some countries there are special rules relating to foreign policy which are explained by their historical traditions and their own legal cultures. This is so of the **principle of neutrality** (Malta, Austria, Sweden, Switzerland), **comprehensive defence** (Austria), **non-alignment** and **non-participation in military alliances** (Malta). These rules are sometimes set out in the Constitution. Thus Article 1.3 of the Maltese Constitution provides that Malta is a neutral country which actively works for peace by adhering to the doctrine of non-alignment and refusing to take part in any military alliance. Similarly, in Austria the principles of neutrality and comprehensive defence are found in the Constitution. Sometimes these result from custom given concrete form in Government measures (Sweden, Switzerland). These rules may have also been developed (Switzerland).[9]

1.1.3 The values of democracy, the rule of law and observance of human rights

Are these values, which are found in numerous national Constitutions and prescribe the general conduct of the State, also binding in the context of the definition of foreign policy? It is undoubtedly rare for there to be an **express reference** to these values among the principles to be observed when foreign policy is defined. The only example is Bulgarian Constitution, which, when referring to the fundamental objectives of the foreign policy of the country, includes the welfare and fundamental rights of citizens. It is apparent, however, that in spite of the absence of specific reference to these values, they are binding on foreign policy under a twofold doctrinal construction.

First, **if these rules are among the principles to be observed by the public powers in general**, they must also be observed when foreign policy is defined.[10] Thus in Spain, although the Constitution makes no mention of these principles as legal foundations of foreign policy, it expressly prohibits (Article 95.1) the signature of treaties containing provisions contrary to the Constitution. Having regard to the importance of these values in domestic law, this implies the need for a policy which endeavours to satisfy the principles and values set forth in the Constitution. The replies received from a number of countries seem to support this point of view (Croatia, Slovenia, Switzerland, Turkey, Germany, Greece, Italy, Lithuania, Russia). This position is corroborated by the recognition of the existence of absolute limits to European integration as a result of the need to observe these principles. This is the case in Germany, according to the case-law of the Federal Constitutional Court[11]. In other countries (Austria, Norway), however, the above mentioned values

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[9] *On this point, see the chapter on Switzerland in the appendix.*

[10] *On this point, see the well-known "Einerseits-Andererseits-Theorie" of German doctrine, which states that it is necessary to strike a balance between, on the one hand, the obligation for the public powers to conduct themselves in a way which is consistent with human rights and, on the other hand, the need to observe other imperatives. Thus the European Commission of Human Rights considered that Germany's refusal to exercise diplomatic protection in favour of one of its nationals was justified by Germany's intention to protect friendly relations with Poland; K. HAILBRONNER, Kontrolle der auswärtigen Gewalt, Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer, pp. 15 and 24.*

[11] *See in particular the Solange I and II decision of the German Constitutional Court:*

have a value which is more political than legal.

Secondly, the accent is often placed on the accession of numerous States to treaties which guarantee human rights and fundamental freedoms. In accordance with the principle *pacta sunt servanda*, these principles must be observed by the public powers when they determine their policy, including foreign policy (Netherlands, Croatia, Greece, Poland and Switzerland).

1.1.4 Diplomatic protection and the right of asylum

In the context of the same desire to protect individual rights, specific actions are sometimes imposed on the State in the context of its foreign policy. Thus the **protection of nationals living abroad** is an obligation which is often imposed on the public powers. The Spanish Constitution requires the public powers to take care to protect the economic and social rights of Spanish workers abroad. In slightly different terms, Article 108 of the Greek Constitution provides that the State is to safeguard the living conditions of the Greek diaspora and the maintenance of its links with the mother country. It must also safeguard the education and the social and occupational promotion of Greeks working outside the national territory. Similarly, the Hungarian Republic regards itself as responsible for the fate of Hungarians living outside its frontiers. Alongside this obligation imposed on the public powers to protect the interests of nationals residing abroad, a more specific obligation to **exercise diplomatic protection** is found in Germany. Article 1.2 of the Basic Law, which announces the existence of inviolable and inalienable laws, is regarded as the source of an obligation requiring Germany to exercise diplomatic protection in favour of its citizens *vis-à-vis* any States which might ill-treat them.

Furthermore, certain Constitutions, desirous of ensuring observance of the fundamental rights of aliens, guarantee the **right of asylum** and **strictly regulate the possibilities of extraditing and deporting refugees**. Thus Article 16 of the German Basic Law provides that anyone persecuted on political grounds has the right of asylum. The same right is established in the Italian Constitution. These matters are also governed at Constitutional level in Portugal.

Bundesverfassungsgericht, Beschluss von 29/5/74, Europarecht 1975, n°1/2, p.150 et Bundesverfassungsgericht, Beschluss von 22/10/86, Europarecht 1987, n°1, p.51.

1.1.5 Principles linked with the sovereignty of the State

A separate place must be given to the principles of foreign policy which are linked with the guarantee of the sovereignty and survival of the State. Thus references are often found among the constitutional provisions relating to foreign policy to national sovereignty (Bulgaria, Estonia, France, Russia), the independence of the State (Bulgaria, Estonia, Georgia, Hungary, Lithuania, Switzerland), the integrity of the territory (Estonia, Hungary), national security (Estonia, Lithuania) and the preservation of the nation and its culture (Estonia). Furthermore, the existence in certain Constitutions of express authorisation for certain transfers of sovereignty shows that the **inalienability of national sovereignty constitutes a principle which is binding when foreign policy is determined and which can be assigned limits only within the strict framework laid down by the Constitution**. Thus in Germany Article 23.1 of the Basic Law, which empowers the legislature to transfer certain sovereign powers to the European Union, and Article 24.1, which provides for the transfer of sovereign powers to international organisations, are exceptions to the rule of the inalienability of national sovereignty. In Italy, too, Article 11 of the Constitution expressly authorises limitations of national sovereignty for the purpose of constructing an order of peace and justice among nations.

Where such transfers of powers are not expressly authorised, it has sometimes been necessary to amend the Constitution before concluding certain international treaties. Thus the adoption of the Maastricht Treaty, which entailed a transfer of sovereignty from the Member States to the European Union, was possible only after certain Constitutions had been amended. This was the case in France and Portugal, for example.

1.1.6 Objectives of foreign policy

A further question to arise is whether **the determination of the objectives by the Constitution may have other than a political and programmatic character**. In certain countries the Constitution actually mentions certain actions in order to encourage them. Thus Article 7.4 of the Portuguese Constitution gives a special place to relations with Portuguese-speaking countries. Similarly, in Spain Article 11.1 of the Constitution provides for the conclusion of dual nationality treaties with Iberian-American countries and countries which have or have had special links with Spain. Since there is no legal requirement for authorisation to conclude these treaties, the reference to them must be regarded as encouraging the promotion of political action in this sense. Similarly, Article 56 of the Spanish Constitution gives special importance to relations with the nations of its historical community. This article has also been regarded as encouraging the development of relations with Latin America. These provisions seem to be incentives more than obligations. The debate as to the legal or political nature of these rules is open.

1.2 The legal effectiveness of the principles to be observed in defining foreign policy

As we have just seen, there is a definite movement towards the establishment of legal rules which must be observed when the content of foreign policy is determined, although the general and declaratory content of these rules often means that they tend to be political in nature. However, the

confirmation of this tendency depends essentially on the - principally judicial - means of controlling the compatibility of the implementation of foreign policy with the rules in question.

In the context of foreign policy, **the courts have long proved reluctant to control the acts of the public powers**.[12]

First, in a number of countries the "act of State" theory has the effect that acts of the public powers carried out in connection with foreign policy are not amenable to judicial review. "Where the Government carries out acts in domestic or international matters which are recognised as acts of State, it is difficult to see how it is performing administrative tasks." The exercise of the function of government is not a matter for the control of the court, but possibly for the political control of the legislature.[13] It is in accordance with this concept that in some countries, and particularly in France, Greece, Croatia and Slovenia, acts which fall within the context of foreign policy[14] escape any control by the courts.[15]

In other countries **the acts of certain organs are not amenable to judicial review**. This is the case in Finland for decisions of the President and acts of Parliament. In the Netherlands Article 120 of the Constitution prohibits the Courts from ruling on the constitutionality of international treaties. In Switzerland the courts are prohibited from reviewing the constitutionality of federal legislation and international treaties (Article 113.3 of the Constitution). The fact that the acts of certain organs are not amenable to judicial review is explained by the nature of the political system in force in these countries, where the predominance of a particular power sometimes means that its subordination to judicial review is limited.

However, exclusion from judicial review is in the process of becoming less absolute. Thus France has a preventive control of the conformity of treaties with the Constitution. The executive is also deprived of its traditional freedom of action where the fundamental rights of the person are in

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[12] *As Paul Reuter observed, the courts have drawn a more or less definite line which they do not allow themselves to cross, because they consider that it defines a field which falls outside their competence. There is not a single court in the world for which this line does not exist. According to Lord Wilberforce, the principle of judicial abstention in international matters is not at the courts' discretion but is inherent in the very nature of the judicial process. There are some cases where the court cannot state the law, not because the case is political but because the question which has arisen is political. The question is necessarily political in the absence of judicially identifiable operational "standards" to resolve it, as Judge Bremann observed in the Baker v. Carr case; E. ZOLLER, Droit des relations extérieures, PUF 1992, p. 311. For a discussion of the relationship between the judiciary and foreign affairsin the USA, see appendix 38.*

[13] *Quotation from René Chapus, in Dictionnaire Constitutionnel, O. DUHAMEL, Y. MENY, 1992, p. 7.*

[14] *These are acts associated with the actual operation of diplomatic negotiation.*

[15] *In Germany, on the other hand, an attempt to introduce the "Theorie der regierungsfreien Hoheitsakte" met with failure; K. HAILBRONNER, Kontrolle der auswärtigen Gewalt, VVDStRL, p. 12.*

issue.[16] The development of the "separable act" theory has also allowed the courts' scope for intervention to grow wider. In Slovenia, an exception to this absence of judicial review is provided in the event of error, crime or tort. Similarly, in Finland it is possible to lodge an extraordinary appeal against administrative decisions, including the decisions of the President of the Republic, on the basis of procedural errors, other grave errors of law or substantial new evidence.

In a large number of European countries, moreover, **Constitutional Courts or their equivalents are empowered, *inter alia***, to **review the conformity with the Constitution** of treaties and other foreign policy measures. This is so in Albania, Armenia, Austria, Bulgaria, Canada, the Czech Republic, Estonia, France, Germany, Hungary, Kyrgyzstan, Lithuania, Slovenia, Spain, Georgia, Malta, Portugal, Romania and Russia. In some countries, such as Italy, this power is confined to the review of the constitutionality of internal legislation enacted for the purpose of implementing a treaty, as opposed to the power to review the treaties themselves.

Sometimes **special organs** have been given responsibility for ensuring effective respect of the principles which must be observed in defining foreign policy. This is the case in Estonia, where a *legal chancellor* is responsible for ensuring that legislation and government measures are compatible with the Constitution. Similarly, in Georgia a *special committee* has been established to ensure observance of human rights. In many countries an *ombudsman* has also been given the same responsibility, including in relation to foreign policy (Finland). Lastly, it quite frequently falls within the powers of **certain bodies involved in foreign policy** to ensure compliance with the principles which must be observed when the directions to be taken by foreign policy are determined. This is the case in Russia, where the President may annul any Government measures which are contrary to the Constitution. Similarly, in some countries the political control which Parliament exercises over the Government is considered to ensure compliance with the principles applicable in the relevant matters (Romania, Slovakia, Ukraine).

The emergence of Constitutional **case-law** concerning the fundamental choices of foreign policy **has gone through a discrete but significant development**. Control of the acts determining foreign policy in relation to Constitutional or other norms is not frequent. The only countries which have confirmed that a body of Constitutional case-law exists are Bulgaria, France, Germany and Portugal. Furthermore, where such control does exist it is often limited in scope. The courts are inspired by the notion that it is of fundamental importance that the State should appear at international level with a single voice, which is naturally that of the executive. Therefore the courts prove to have great reservations about ruling on the legality of an international action of the State. None the less, the increasing number of courts which assume responsibility for ensuring observance of the Constitution and the inclusion in the Constitutional arsenal of norms relating to foreign policy seem to lead gradually towards the development of a degree of judicial control of foreign policy. This marks a significant development associated with the phenomenal importance acquired nowadays by international relations and the general acceptance of the principle of the rule of law. The Venice Commission encourages this development and approves that the judiciary and in

[16] *E. ZOLLER, Droit des relations extérieures, PUF 1992, p. 342.*

particular the high jurisdictions ensure the respect of the constitutional order and the above mentioned fundamental principles in the field of foreign policy.

2. Democratisation of the conduct of foreign policy

Alongside the recent evolution towards the establishment of legal rules which must be observed when foreign policy is defined, there is also a corollary movement towards a certain democratisation of the implementation of foreign policy.

Increasing globalisation has the effect that the legal norms created within international organisations or as a result of multilateral negotiations are growing in number. Nowadays the conduct of foreign policy sometimes has direct and immediate repercussions on the life of citizens[17]. Foreign policy is no longer confined to questions of war, peace and trade, as in the nineteenth century. Consequently, it can no longer be left entirely to the discretion of the executive.

The reason which traditionally justified the executive's monopoly in this sphere - namely the need to take rapid and undivided decisions in the positions defended as against other countries -persists. The executive therefore retains its predominant responsibility for foreign policy. However, it is now being joined by **other players**. The increasing role played by Parliament, the growing practice of consulting citizens by referendum, the first steps taken on the international stage by decentralised authorities and the increased importance of dialogue with various socio-professional categories all go to mark the end of the hegemony of the executive in foreign policy. The power to take decisions is therefore shared and the Constitutional Courts are also led to ensure that this division of powers is observed.

2.1 Division of responsibilities between the legislature and the executive

Nowadays there is a movement towards an increasing involvement of national Parliaments in the sphere of foreign policy, by providing them with more means of information and control and reinforcing their responsibilities. The Venice Commission considers that a greater implication of Parliaments in the field of foreign policy should be encouraged; Parliaments should, in particular, be fully informed on foreign policy and examine it regularly in order to participate in the determination of the direction foreign policy is to take.

The greater role given to the legislature is explained in Western democracies as a reaction to the way in which the executive commandeered foreign policy.[18] The predominance of the

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[17] *The same conclusion is reached by K. HAILBRONNER, Kontrolle der auswärtigen Gewalt, VVDStRL, p. 122.*

[18] *Foreign policy traditionally came within the discretion of the executive. "Negotiation cannot be the act of several persons and nothing of what affects a people's relations with its neighbours can be prepared in the tumult of a deliberative Assembly", Eugène PIERRE, Traité de Droit Politique, Electoral et Parlementaire, Paris, Second Edition, 1893, no. 456. "In external politics, Parliament's role consists in entrenching and ratifying rather than in commanding and indicating the direction to be taken by*

executive in the conduct of international relations, owing to globalisation and increasing regulation of questions at international level, made evident the inadequacy, not to say the absence, of parliamentary control in this sphere.[19]

On the other hand, the procedures for democratic control to ensure the lawfulness of normative action are also absent at international level. What is referred to here is the **problem of the democratic deficit in decision-making processes at international level**, a problem which is especially acute at the European level owing to the high degree of Community integration. The inadequacy of the control of national Parliaments over the activity of the representatives of their Governments in the Council is not counterbalanced by an effective control by the European Parliament. However, the situation in the European Union is only an example which illustrates a more general evolution. The intensification of normative activity at international level and the increasing interpenetration of national and international legal orders raises the question whether a new democracy must be invented for decision-taking at international level. This, as President Braibant writes, is a real problem which is the problem of the modern age: how are democratic procedures for the elaboration of international law to be introduced alongside the democratic procedures for the elaboration of domestic law?[20] It is to this need to democratise the conduct of foreign policy that the movement towards an increasing involvement of national Parliaments in foreign policy corresponds.

In this context consideration will also be given to the particular historical heritage of the various countries. In some countries the **increased involvement of the legislature in the sphere of foreign policy is explained by the traditional predominance of the legislature in the political system** (Switzerland). In the case of the new democracies, the important role given to the legislature may be seen as the survival of the traditional predominance of the organ which supposedly represented the people in a political system where the separation of powers is henceforth established.

2.1.1 The increasing importance of the legislature's role in foreign policy

Depending on the political systems, the legislature plays a more or less important role in the conduct of its country's foreign policy. It is possible to distinguish situations where **Parliament participates directly in forming foreign policy**, by defining the broad directions to be taken by foreign policy or exercising its power to ratify treaties, and those where it plays an indirect role, by

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government action", Michel AMELLER, Union Interparlementaire, Paris, Second Edition, 1966, p. 363. "It is as though democracies had never succeeded, in the sphere of foreign policy, in completely eliminating the memories of regal conduct. The conduct of foreign relations remained to a degree monarchic", E. ZOLLER, Droit des relations extérieures, PUF 1992, p. 29.

[19] *Many writers consider it essential that national Parliaments should be increasingly involved in foreign policy. On this point see the observations of R. WOLFRUM, Kontrolle der auswärtigen Gewalt, VVDStRL, pp. 41 and 62.*

[20] *TH. S. RENOUX, M. de VILLIERS, Code constitutionnel commenté et annoté, Editions Litec 1994.*

exercising its power to control the executive.

2.1.1.1 Parliament may participate directly in determining foreign policy

The Parliament plays a direct part where it exercises its power to **approve international treaties with a view to the ratification**. In some countries Parliament has exclusive power to ratify treaties. This is the case in Armenia, Ukraine, Slovenia, Romania and Georgia. In other countries Parliament has a general power to ratify treaties, except for certain categories of agreements. This is the case in Turkey and Switzerland, where Parliament's power does not include, in particular, agreements of minor importance.

In the majority of States there is provision for Parliament's intervention for all questions of major importance. This applies in particular to:

- treaties of *war* and *peace* (France, Lithuania, Portugal, Russia),

- *political* and *military* treaties (Albania, Austria, Bulgaria, Croatia, Spain, Lithuania, Portugal: military treaties, Spain, Italy, Slovakia: political treaties),

- treaties to do with frontiers (Albania, Netherlands, Estonia, France, Italy, Lithuania, Malta, Poland, Portugal, Russia, Spain),

- those *concerned with fundamental rights* (Albania, France: treaties relating to personal status, Greece :concessions individually affecting Greek nationals, Russia, Spain),

- treaties *entailing financial commitments* (Albania, Austria, Bulgaria, Croatia, Estonia, France, Italy, Lithuania, Norway, Poland, Spain),

- those *concerned with the sovereignty and independence of the country* (Liechtenstein, Malta),

- those *amending existing legislation* (Albania, Austria, Croatia, Estonia, Finland, France, Italy, Poland, Spain, Sweden),

- those whose *implementation requires legislation* (Croatia, Netherlands, Norway, Slovakia, Sweden),

- those which fall within the *legislative sphere* (Austria, Finland, Germany, Latvia).

The same applies to treaties concerning *the country's accession to military alliances* (Croatia, Poland),

- or, generally, to *an international organisation* (Croatia, Estonia, France, Greece, Lithuania, Malta, Portugal, Russia, Spain).

It is common for the Constitution to set out a list of treaties which, owing to their importance, must be approved by Parliament. However, it is sometimes merely stated, without more, that treaties of major importance must be ratified by Parliament. This is the case in Norway and Sweden.

Parliaments therefore frequently intervene to authorise the ratification of treaties. Even though the significance of this intervention may be relativised (in Austria, for example, Parliament has never refused to ratify a treaty), the fact that there may be fresh negotiations before the treaty is ratified, owing to the views expressed by Parliament, is undoubtedly important.

The significance of parliamentary intervention is not always the same. In some countries Parliament *actually ratifies* treaties and in others it *authorises their ratification* (for example in Italy) or agrees to their ratification (Norway). In Greece, for example, Parliament's approval does not mean that it participates in the act of ratification, accession, acceptance or approval of a treaty, but it is a condition of the treaty's validity in domestic law. Consequently, after Parliament has given its agreement, the President of the Republic *may decide not to ratify the treaty*, or to delay ratification. In Finland, the consent of the Parliament is not only a condition for the treaty's validity in domestic law but also an authorization to the Government to ratify the treaty. However the Government has no legal duty to make use of this authorization.

Finally, particular attention must be given to the scope of this parliamentary intervention. It is sometimes the case that Parliament's agreement is required for the adoption of the treaty but that it is not necessary where the treaty is denounced or where reservations are expressed. This is the case in Finland[21], Greece, Malta and Norway.

However, Parliament's power may sometimes go much further. Sometimes Parliament is **empowered to define the principal directions to be taken by foreign policy**.

This is the case in Croatia, the Czech Republic, Estonia, Georgia, Hungary, Kyrgyzstan, Latvia and Slovenia. In Italy the Government and Parliament are jointly responsible for establishing the fundamental principles of foreign policy.

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[21] *However the recent report of a Government commission (n°13 of 1997) proposes a change to the Constitution aiming to make the parliamentary approval a condition for the denunciation of a treaty.*

Where Parliament does not have the role of defining the essential principles of foreign policy, it is sometimes provided that Parliament **must at least intervene when decisions of major importance for the country are taken**. This is the case in Bulgaria and Denmark. In some countries it is because of practice that Parliament is consulted where important problems are to be resolved (Norway). In other countries, on the other hand, there is no general presumption that all questions of major importance must be authorised by Parliament (Germany).

Lastly, in some countries **directives may be given to the Government** (Croatia, Italy, Spain). However, this possibility is precluded in other countries (Turkey). In such cases Parliament merely has the power to express its views. Thus in Turkey all Parliament is able to do, in the absence of the power to issue directives to the Government, is to adopt resolutions expressing its views, which do not have force of law. Similarly, in Greece external affairs are within the exclusive power of the executive. Parliament may give advice or express wishes but cannot itself conduct foreign policy.

2.1.1.2 Parliament may have a role in determining foreign policy by virtue of its power to control the executive

In several States Parliament must **pass a vote of confidence** in the Government when the Government is invested. Whether by a motion of censure[22] or a right of interpellation,[23] Parliament may therefore withdraw its confidence from the Government at any time where its policy does not correspond to Parliament's views. In many countries the legislature is empowered to control the policy of the executive (Albania, Armenia, Austria, Bulgaria, Croatia, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Netherlands, Poland, Romania, Slovakia). This means that the legislature has considerable power to influence the options effected in foreign policy. It should be noted, however, that the practical importance of this power depends on the terms in which it is framed and, more specifically, on the conditions required for withdrawal of confidence from the Government. Thus in France, under the Fifth Republic, the conditions for adopting a motion of censure are so strict that only a single motion of censure has been adopted.

Secondly, Parliament exercises control over the definition of foreign policy by means of its **budgetary powers**. Thus it is not uncommon for there to be a general discussion of the fundamental principles of foreign policy within Parliament when it votes on the expenditure of the Ministry of Foreign Affairs. This is the case in Austria, Croatia, the Czech Republic, Finland, France, Germany and the Netherlands. The Finnish Parliament may, on the basis of its budgetary powers, avoid the President's foreign policy projects which require new funding.

Lastly, in the majority of countries Parliament has at its disposal the ordinary means of controlling Government policy, namely the **possibility of questioning Ministers, requesting information,**

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[22] *This is the constitutional mechanism which allows Parliament to overturn the Government where it disapproves of its policy.*

[23] *This is a procedure of parliamentary control which takes the form of an oral question followed by discussion and generally ending in a vote expressing Parliament's judgment of the Government's reply.*

reports etc. This is the case in Albania, Austria, Croatia, the Czech Republic, Finland, France, Hungary, Italy, Malta, Romania and Slovenia.

Parliament's role has increased in the areas where normative activity at international level is most intense. Thus the **powers of Parliament to be informed have had to be reinforced, especially in the member countries of the European Union**. A specific duty to inform the Parliamentary Committee specialising in European affairs has been established in Finland. In Italy there is a legal obligation to inform Parliament of draft legislation of the European Union prior to its adoption. The same applies in Portugal and in France, where Article 88.4 of the Constitution requires the Government to lay before the National Assembly and the Senate draft Community measures which include provisions of a legislative nature. Lastly, in Germany Article 23 of the Basic Law provides that the Bundestag is to be constantly informed of developments in this area. Before the Government participates in the decision-making process in the European Council the Bundestag is to be given the opportunity to state its opinion and the Government must take its resolutions into account.

Furthermore, the **increase in the number of Parliamentary committees** (specialising in foreign affairs, European affairs, assistance and development matters etc.) is a recent phenomenon which corresponds to Parliament's desire to follow more closely the questions concerning foreign policy[24]. On the basis of these committees' reports, Parliament is **better informed** and capable of reacting more quickly and with greater awareness to the various problems which arise. Special foreign affairs commissions have been established in Austria, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, Germany, Portugal, Hungary, Italy, Liechtenstein, Malta, Slovakia, Slovenia and Norway. The power of these commissions sometimes goes beyond the mere ability to obtain information and propose solutions to Parliament. Thus in Austria the Constitution contains special rules concerning the **consent of parliamentary commissions** for certain foreign policy measures adopted in the context of the European Union and Austria's participation in the operations of the United Nations and other international organisations. Similarly, in Denmark there is an **obligation to consult** the Foreign Policy Committee regarding certain questions of major importance. Furthermore, in the particular context of European affairs, all important questions must be discussed within the special committee, which gives the Government a **negotiating mandate**. In Austria a Council for Foreign Policy has also been set up to respond to the need to involve Parliament in the preparatory stage of negotiations.

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[24] *Take for example the case of Croatia, where one finds parliamentary committees specialised in foreign affairs, in interparliamentary cooperation, human rights, ethnic and national entities and minorities.*

2.1.2 The executive's major responsibility in the implementation of foreign policy

Parliaments therefore make a considerable effort to increase their intervention in the context of determining the broad directions to be taken by foreign policy. We shall now examine the executive's responsibilities in this area, look at how they are exercised and define the broad lines of future evolutions in the executive's exercise of its responsibilities.[25]

Although there is no doubt as to the traditional predominance of the executive in defining and implementing foreign policy, the way in which its responsibilities are exercised varies according to the nature of the political systems in the various countries. First, the executive may have a **single head**, as in Switzerland[26] or Georgia,[27] for example, or a **dual head**, in the sense that the executive role is divided between the Head of State and the Government. The way in which powers are divided between these two branches of the executive also varies from one country to another.

In some States, in particular in parliamentary democracies the **role of the Head of State is essentially ceremonial and formal**, since in order to have lawful effect all acts adopted by the Head of State must be countersigned by a member of the Government. This is the case in Austria, Germany, Greece, Hungary, Italy, Liechtenstein, Norway, Portugal, Sweden and Turkey. In certain countries, in particular in presidential democracies, the Head of State is invested with the power of taking essential decisions (Armenia, Croatia). In Russia the President of the Federation is even empowered to determine the principal directions to be taken by foreign policy. In any event, whether symbolically or not, the **Head of State is generally invested with the following powers** (without necessarily having a monopoly): he represents the country, he negotiates, signs and in some countries ratifies international agreements, and appoints and recalls the country's representatives abroad. The representatives of other countries are accredited to the Head of State.

The **Government** has a wide range of responsibilities for foreign policy. In some countries the Government is primarily responsible for **determining the fundamental principles of foreign policy**. This is the case in Denmark, Germany, Greece, Malta, the Netherlands, Norway, Portugal, Slovakia, Switzerland and Turkey. However, the increasing amount of legislation in various areas means that the power of the executive to determine the foreign policy of the country is sometimes limited (Austria). In countries where the Government is not empowered to do so, it is still often empowered to take initiatives in determining foreign policy (Bulgaria, Kyrgyzstan).

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[25] *Some writers emphasis the risk of stagnation and ineffectiveness which might follow an increased intervention by the legislature in external relations, L. WILDHABER, Kontrolle der auswärtigen Gewalt, VVDStRL, p. 68. Similarly, the observations made by J. BARTHELEMY and P. DUEZ in 1933 still hold true: "With the control of Parliaments, great diplomatic constructions become more and more difficult", E. ZOLLER, Droit des relations extérieures, PUF 1992, p. 254.*

[26] *In Switzerland the Head of State is a primus inter pares and does not have a particular role.*

[27] *In Georgia, on the other hand, there is no Government, but the Ministers serve directly under the President of the Republic.*

The power to **represent the country abroad and to negotiate and conclude international treaties** also belongs to the Government, even though it is sometimes shared with the Head of State. In this context, the following countries may be mentioned: Austria, Croatia, Estonia, Greece, Hungary, Romania, Russia, Slovakia, Slovenia, Switzerland, Sweden, Czech Republic, Albania.

Lastly, the **implementation of foreign policy and the coordination of activities** in this area of foreign policy are generally within the competence of the Government.

In short, the way in which responsibilities are divided between the President of the Republic and the Government depends on **the nature of the political system** established in each particular State. The **executive** as a whole undoubtedly has **very significant powers** in this matter, which vary between determining the directions to be taken by foreign policy and implementing foreign policy and administering it from day to day.

Here, too, however, a development within the executive itself deserves special mention. Increased cooperation between States and the process of European integration have blurred the distinctions between States' domestic policy and their foreign policy. **More and more frequently, Ministers responsible for a certain branch of domestic affairs endeavour to take over the external aspect of their responsibilities**. Thus they claim the power to negotiate or conclude international conventions. This development is seen, in particular, in Austria, Croatia, Greece and the Netherlands.

2.2 The emergence of new actors in the conduct of foreign policy

The people, which was long excluded from the conduct of political affairs, in strict conformity with the principle of representative democracy, has gradually succeeded in being directly associated with the direction of these affairs.[28] This arrival of the people on the political stage has been expressed, in particular, by the introduction of procedures of semi-direct democracy in many States, including the determination of foreign policy; it has also taken the form of a demand for power closer to citizens, with responsibilities increasingly been given to decentralised authorities, including in the sphere of foreign policy.

In the context of this desire for decisions to be taken closer to citizens, mention should also be made of an evolution towards **consultation of socio-professional circles**, in particular the growing involvement of NGOs[29] in this area. Pressure groups have no official role in foreign policy, but they may have a *de facto* influence on the directions which it takes. Negotiations with American lobbies in the corridors of congress are well known. At the European level there is also indirect recognition of the importance of dialogue with socio-professional circles before adopting decisions. The

[28] *B. CHANTEBOUT, Droit Constitutionnel et Science Politique, published by A. Colin, 1996, p. 209.*

[29] *Non-governmental organisations.*

creation of the Economic and Social Council, which plays a part in the Community legislative procedure, is evidence of this evolution.

2.2.1 The participation of the people in the conduct of foreign policy

Nowadays the people plays an increasingly frequent part in determining the broad principles of foreign policy. First, there are **questions of such importance that direct consultation of the people by referendum** is provided for in the Constitution. Thus the most important questions concerning the life of the State are subject to a referendum in Ukraine and Lithuania. There is also provision for a referendum for questions relating to participation in an association of States or participation in and withdrawal from an international organisation, in Slovakia and Switzerland. In Denmark the people must be consulted where it is proposed to delegate national sovereignty. In Croatia, a referendum can be called concerning constitutional amendments or other important questions relating to the independence, unity, or existence of the Republic. A referendum is obligatory for any decision about Croatia's participation in alliances or it's withdrawal from such alliances. Lastly, in France a referendum may be held to approve draft legislation aimed at authorising the ratification of a treaty which, although not contrary to the Constitution, would affect the functioning of the institutions. Similarly, a referendum must be held in Austria where a constitutional principle will be altered by a treaty.

In other countries the **possibility of holding referenda is mentioned without further detail**. This is the case in the following countries: Bulgaria, Canada, Estonia, Finland, Georgia, Malta, Romania, Russia, Spain and Sweden.

On the other hand, some Constitutions **preclude referenda in connection with certain matters**. Thus the following cannot be the subject-matter of a referendum: the execution of obligations taken by the country in the context of international law (Hungary), the implementation of treaties (Slovenia), legislation promulgating treaties or authorising their ratification (Hungary, Italy), international treaties (Latvia, Estonia), all questions relating to the budget and finance (Estonia, Slovakia), questions concerning national sovereignty and those relating to rights and freedoms (Slovakia).

The **initiative for popular consultation** sometimes lies with citizens. This is the case in Georgia, Liechtenstein, Lithuania, Malta (but the decision whether to hold a referendum is also a matter for the discretion of the executive), Russia (where the Constitutional Court recognises that the conditions for holding a referendum are met, the President is required to hold one), Slovakia, Slovenia, Switzerland and Ukraine. The initiative for doing so is the preserve of Parliament alone in Estonia and Denmark and of the President alone in Romania. In Armenia popular initiative is excluded in this area.

Legislative initiative, that is to say, the power to set in motion a procedure which may culminate in the enactment of a law, including in the context of foreign policy, belongs to the citizens in Croatia, Slovenia, Switzerland (here the popular initiative is admitted only in constitutional matters, but since there is nothing to prevent provisions unconnected with the exercise of public powers from

being in the Constitution, Swiss citizens have become accustomed to using the constitutional initiative in the same way as they would use the legislative initiative).

In some countries there is **no provision for either a referendum or popular initiative**. This is the case in Germany, Poland and the Netherlands. In Norway there is no such provision, but it is accepted that a referendum may be held as an extraordinary measure. In Greece the possibility of holding a referendum exists but it is only in quite exceptional circumstances that one is held. In Canada, There is no constitutional text concerning referenda. The possibility to organise a referendum is foreseen only by an ordinary law and is purely consultative[30].

The actual use of referenda in connection with foreign policy may be illustrated by the popular consultations held **in the member countries** of the European Union (or candidates for accession). Accession, or participation at a higher degree of integration, have formed the subject-matter of popular consultations in Austria, France, Italy, Norway, Sweden, Finland and Switzerland.

Therefore the people nowadays participate more and more frequently, by procedures of semi-direct democracy, in the exercise of foreign policy. The movement towards the involvement of decentralised authorities has also sometimes produced results.

2.2.2 The role of decentralised authorities in the conduct of foreign policy

Current demands for more involvement of decentralised authorities in the sphere of foreign policy are justified not only by the desire to meet popular aspirations for power to be exercised closer to the people but also by a desire for improved efficiency.

Decentralised authorities participate in the implementation of foreign policy primarily by assuming responsibility, within the framework of their powers, for the actions necessary to give concrete form to foreign policy. However, they also participate, as players, in the formation of foreign policy. The decentralised authorities are empowered to intervene in the sphere of foreign policy in ways which vary according to whether or not they form part of a federal State and according to the historical traditions of the various States. Moreover, the question does not appear to arise in small States (Malta, Liechtenstein).

Thus decentralised authorities may be given a **simple power to cooperate with equivalent bodies** in other countries. This is the case in Albania and Portugal.

Sometimes **decentralised authorities are empowered to participate in negotiations**. Thus in Spain the Autonomous Communities may ask the State to negotiate treaties, but they are not able to conclude them. Similarly, in Portugal the Autonomous Regions (Madeira and the Azores) may be required to take part in international negotiations. In Germany the Basic Law provides that the

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[30] *Consequently in Canada, the consultation of people by referendum is not obligatory and the results of such a consultation are not binding.*

representatives of the *Länder* may exercise the rights of the country as a member of the European Union in areas which essentially fall within their legislative powers. However, these rights must be exercised with the consent of the Federal Government.

In Belgium the effort to allow an active implication of the federate entities to international negotiations is considerable. The Communities and Regions can be represented in the permanent Representation of Belgium to the international organisation concerned, if they wish so (article 4 of the framework-Agreement concluded on the 30 June 1994 between the federal State, the Communities and the Regions). Furthermore, a general consultation is organised by the federal Ministry of Foreign Affairs in order to determine the Belgian position and aiming to seek a consensus (article 5 of the framework Agreement). Only where there is a lack of time or of an agreement, it is foreseen that the President of the Belgian delegation adopts "ad referendum" the position which best expresses the public interest.

On the other hand, concerning Belgium's participation to the Council of Ministers of the European Union, the specific cooperation agreement, concluded on the 8 March 1994, foresees that those matters which are the exclusive responsibility of the Communities or Regions, Belgium is represented by a Community or Regional Minister, with a system of rotation being set up. Concerning those matters for which the Federation and the federate entities have a joint responsibility, Belgium is represented by a Federal, Community or Regional Minister, depending on the case, assisted by an "assessor" Minister representing the other level of power. A permanent coordination is organised within the "Directorate of Administration of European Affairs" of the Ministry of Foreign Affairs in order to seek consensus. If there is no time or in case of persisting disagreement, the Head of the Belgian Permanent Representation can exceptionally adopt "ad referendum" the position which is most likely to express the general interest (article 6 §2 of the Agreement).

Again, decentralised authorities are sometimes even **empowered to conclude treaties**. Thus in Hungary it is provided that the territorial authorities may participate in associations of local bodies and conclude treaties, provided that they do not exceed the powers conferred on them by law. In a federal State such as Austria or Germany, the *Länder* may conclude treaties in areas in which they are empowered to legislate. Similarly, in Switzerland the cantons are able to conclude treaties of local importance or relating to less important matters. However, these treaties must be approved by the Federal Council, which may prevent their ratification or conclude them on its own behalf where they are of national importance. Moreover, a draft law aims to increase the cantons' power in this sphere by empowering them to conclude treaties in their areas of competence.

In Belgium, federate entities dispose of considerable power in this area. When the federate entities are competent for a matter in the internal sphere, they will also be competent in the international domain. Concerning mixed treaties (i.e. those where the Federal State and one or many federate entities are competent), the constituent parties of the Belgian State concerned and the federal authorities, negotiate on an equal footing. All interested parties must consent to the treaty, except in the eventual application of a federal reserve clause.As soon as all interested assemblies have given their agreement, the Minister of Foreign Affairs shall establish the instrument of ratification or

adherence (article 12 of the Cooperation Agreement of 8 March 1994).

Concerning exclusive treaties (i.e. those where the State or one or more of the Regions or Communities have exclusive competence), each entity disposes (following article 167 §3 of the Constitution) of treaty making power. However the governments concerned must first inform the federal authorities of their intention to enter into negotiations with a view to concluding a treaty, as well as any consecutive legal act that they wish to accomplish (article 167 §4 of the Constitution and article 81 §1 of the Law of 8. August 1980). If the federal government expresses any objections, a consultation takes place within an ad hoc body (the inter - ministerial Conference of foreign policy). In case of disagreement, the King (i.e. the federal government) can block the negotiating procedure through a royal decree deliberated in the Council of Ministers[31] in four cases restrictively enumerated[32].
On the other hand, in some countries there is **an obligation to consult the decentralised authorities before adopting any decisions in foreign policy matters**. This is the case, once again, in Germany, where the Basic Law provides that the Federation is to consult any *Land* specifically affected by a draft law. Particularly as regards European matters, it is provided that the Bundesrat, which represents the federated States, is to be involved in the decision-making process of the Federation in so far as it would have to be involved in a corresponding internal measure. Where, in a matter in which the Federation has exclusive legislative jurisdiction, the interests of the *Länder* are affected, the Government is to take into account the opinion of the Bundesrat. Where the legislative powers of the *Länder* are affected, the opinion of the Bundesrat is to prevail in the decision-making process of the Federation. Similarly, in Spain there is an obligation to inform the Autonomous Communities regarding the negotiation and signature of treaties which may have repercussions in areas which are of particular concern to the Communities.

Decentralised authorities are therefore increasingly given the right to participate in, or at least a right to be informed about, the conduct of their country's foreign policy. Two cases deserve special mention, both on account of the particular features of the problems which have arisen and because of the originality of the way in which they were resolved.

The first concerned **Canada**. Controversy arose in that country between the Federal Government, which defended the exclusivity of its competence to represent the country in international relations, and Quebec, which demanded separate representation for the provinces in international conferences for matters coming within their legislative power. A compromise was eventually reached, in the

[31] *The reader is reminded that since 1970 the Council of Ministers has equal linguistic representation, with the possible exception of the Prime Minister.*

[32] *Those cases are the following: a) when the contracting party is not recognised by Belgium; b) when Belgium does not have diplomatic relations with the contracting party; c) when, as a result of a decision or an act of the State, relations between Belgium and the contracting party are broken off, suspended or seriously compromised; d) when the envisaged treaty is contrary to the international or supranational obligations of Belgium. An appeal against the royal decree suspending the negotiation procedure of an exclusive treaty can be made to the Council of State.*

absence of clear legal provisions. The provinces thus acquired a presence in the Canadian delegation for matters falling within their powers. Furthermore, the Federal authority concluded a cultural agreement with France, under which Quebec may directly conclude agreements with France in the areas envisaged. The problem which arose was resolved in a flexible manner. A specific solution was therefore found to respond to the specific situation of Quebec.

Secondly, the vertical division of powers in the sphere of foreign policy in the **Federation of Russia** is of particular interest. According to the Constitution of the Federation, the following matters come within the competence of the Federation of Russia: foreign policy, international relations, treaties, problems of war and peace, external economic relations, etc. However, the Republics are recognised as autonomous participants in international agreements, in so far as this is not contrary to the Constitution and the laws of the Federation. The coordination of international relations within the Federation is therefore not clear. Thus **treaties have been concluded between the Federation and its Republics to settle the question of the delimitation of their respective powers**. This reference to agreements between the Federation and its subjects to resolve the question of the division of powers seems to correspond entirely with the desire to democratise foreign policy and the wish to make relations between the Federation and its subjects more consensual. Furthermore, it is provided that international treaties concluded by the Federation which deal with questions which fall within the competence of its subjects must be concluded in agreement with its subjects. Moreover, the Republics are recognised as having a **power of recommendation** with the President of the Federation concerning the conclusion and denunciation of international treaties. The autonomous Republics therefore have important powers concerning the conduct of foreign policy. On the other hand, the organisation established to ensure coordination between the former members of the Soviet Union, the **CIS**,[33] has **no international powers**,

A tendency towards the decentralisation of the exercise of power, including in the conduct of foreign policy, thus seems to be emerging.

Conclusions

An inventory of legal foundations of foreign policy reveals traces of a twofold evolution.

There is a movement towards the establishment of legal rules which must be observed when foreign policy is determined. While the existence of legal rules which are binding on the content of foreign policy is generally accepted in international law, from the point of view of domestic law, foreign policy was traditionally regarded as the result of political considerations. Henceforward there will be an increasing limitation on the freedom of the public powers to determine the directions taken by foreign policy, in the light of legal imperatives of domestic law. The practical importance of such an assertion is evident where a discreet but definite development of mechanisms to control observance of the above-mentioned rules is found. The unprecedented expansion of Constitutional Courts at the end of the century provides the basis for a more intensive development in the same

[33] *Community of Independent States.*

direction.

At the same time, a movement towards a certain democratisation of the implementation of foreign policy is emerging, as a corollary to the above-mentioned evolution. Admittedly, the executive retains main responsibility in these matters, but other players are taking up their positions alongside it. The growing involvement of national Parliaments and the increasingly frequent consultation of citizens by referendum, the appearance of decentralised authorities on the international scene and the recognition of the need for dialogue with the socio-professional milieux indicate that nowadays the frameworks within which foreign policy was traditionally conducted tend to be out of date.

APPENDIX

The summary report on the legal foundations of foreign policy is followed by an appendix, the purpose of which is *to present the relevant rules on a country-by-country basis*. This is designed to facilitate comparison between the legal orders of the various countries and to enable the reader to appreciate current developments in this field. The intention was to present the legal foundations of foreign policy in the various States according to a *plan corresponding to the essential aspects of the subject*; this plan is employed systematically for each country[34] and, moreover, is the same as that followed in the summary report.

Thus for each country *the first part sets out the principles which must be observed when foreign policy is determined* (A. Principles). In the first section (1. Identification) these principles, their origins, scope and content are identified, while the second section looks at the effectiveness of these principles by examining, in particular, the control mechanisms which ensure that they are observed (2. Control mechanisms). Since comparisons between the legal orders of the various countries are thus made easier, the reader may draw conclusions as to the existence of higher legal principles which bind the public authorities and have the consequence that these authorities must take into account not only political considerations but also legal imperatives when defining foreign policy.

The second part examines the legal rules relating to the implementation of foreign policy (B. Implementation). This part sets out the responsibilities of the legislature (1. The legislature), the executive (2. The executive), the people (3. The people) and decentralised authorities (4. Decentralised authorities). The extent to which these various actors are involved in the conduct of foreign policy should allow the reader to detect, *inter alia*, signs of the democratisation of the implementation of foreign policy, associated with the increasingly important role played by Parliament in this field, and also signs of a certain decentralisation in the exercise of foreign policy, with decisions increasingly being taken at a level closer to the citizens.

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[34] *Where, in relation to a particular country, one of the aspects of the subject is not dealt with, this should, in principle, be taken to mean that the question does not arise in that country. The contribution received from the United States deals exclusively with the power of the judiciary with respect to foreign policy and not with the other questions posed in the questionnaire. The contribution has nevertheless been included in the appendix since it is of particular interest to the present report.*

1. ALBANIA

1.1 Principles

- Identification

There are *no legal principles* specifically applicable to foreign policy.

- Control mechanisms

Pursuant to Article 24.4 of the Constitution, the *Constitutional Court* determines whether international treaties are compatible with the Constitution prior to their ratification.

1.2 Implementation

- The legislature

Under Article 16 of the Constitution, the People's Assembly has the following powers: to *ratify* or denounce political or military treaties, those relating to frontiers, those concerning the fundamental rights and duties of citizens, treaties imposing financial obligations on the State or amending existing legislation and those which make provision for ratification or denunciation by the People's Assembly. The People's Assembly controls the activities of the Council of Ministers and the State Attorney's Department.

The Government is controlled by the Assembly, according to the normal control methods employed by parliamentary assemblies (vote of confidence, interpellation etc.).

- The executive

The *President of the Republic* has the following powers (Article 28): he concludes treaties and ratifies or denounces those which are not examined by Parliament; he appoints and dismisses diplomatic representatives, on a proposal from the President of the Council of Ministers, and he accepts the credentials of foreign representatives.

The *Council of Ministers* has the following powers (Article 36): it directs and supervises the activities of Ministers and other administrative authorities, concludes treaties and adopts or denounces those which do not need to be ratified.

- Decentralised authorities

District and regional authorities are not empowered to develop international relations. They may only co-operate with equivalent bodies in other States in the spheres of investment, the economy and culture (and possibly conclude agreements which do not have the force of treaties).

2. ARMENIA

2.1 Principles

- Identification

Armenia's arrival on the international relations scene coincided with its acquisition of independence on 23 September 1991. Before this, as one of the republics of the Soviet Union, Armenia did not have the prerogative of conducting its own independent foreign policy. Consequently, Armenia has only a short tradition in foreign policy matters.

The central preoccupation of the Republic of Armenia is the conflict in Nagorno-Karabakh. Armenian foreign policy seeks a peaceful solution to this conflict. Hence its active participation in the work of international organisations such as the Minsk Group, within the framework of the OSCE, in order to resolve the Nagorno-Karabakh conflict.

This policy issues in fact from the principles expressed in Article 9 of the Constitution. This article states the commitment of the Armenian authorities to conforming with international norms in the conduct of their foreign policy: *The Republic of Armenia conducts its external relations according to the norms of international law, aiming to establish friendly relations in accordance with the mutual interests of all countries.*

More generally, other constitutional provisions concerning the conduct of Armenian foreign politics refer to international norms. For example, Article 11 of the Constitution addresses concerns of the Armenian diaspora: *The Republic of Armenia contributes to the preservation of Armenian historical and cultural values, supporting the development of Armenian educational and cultural life in other countries in accordance with the norms and principles of international law.*

Furthermore, the Preamble to the Constitution states the Armenian people's commitment to the "universal values" of mankind. Article 48 of the Constitution forbids the use of constitutional rights and freedoms to "stir up national, racial and religious hatred or to advocate violence and war". Finally, the Constitution prescribes the protection of human rights and freedoms in accordance with "the norms and principles of international law" (Article 4).

- Control mechanisms

The Armenian Constitution institutes two types of control: the first political and the second judicial.

First, the Government, which ensures the implementation of foreign policy, as well as of defence and national security (Article 89.6 of the Constitution) is subject to political review by the national Parliament of Armenia: vote of confidence requested by the Government when presenting its general policy statement, vote of no confidence passed by members of Parliament.

Second, the Constitutional Court of the Republic of Armenia must review the conformity of international treaties with constitutional norms before their ratification by Parliament (Article 100.2 of the Constitution). In adopting the Constitutional Court of the Republic of Armenia Act (20 November 1995), Armenian legislators wanted to make this review mandatory: the President of the Republic must in all cases submit international treaties signed by Armenia to the Constitutional Court to ascertain their conformity with the Constitution. Treaties found to be in conflict with the Constitution cannot be ratified, except where the Constitution is amended by referendum (Article 6 para. 6 of the Constitution). The Constitutional Court passes judgment not on the appropriateness but on the constitutionality of the international treaty.

2.2 Implementation

In Armenia, the classical royal prerogatives, notably in matters concerning international relations, are allocated to the President of the Republic. Given this extension of competence of the President, the Armenian Constitution grants the Parliament effective powers of review over the acts of the President of the Republic.

- The legislature
First of all, the Parliament conducts a review of the use of loans and credits awarded to Armenia by other countries or by international organisations (Article 77 para. 1 of the Constitution). The Armenian national Parliament may pass a vote of no confidence in the Government at the initiative of the Parliament (Article 84 of the Constitution) or when the Government presents its programme of action, within twenty days following the formation of the Government or of the Parliament (Article 74 of the Constitution). Finally, at the instigation of the President of the Republic, the Armenian national Parliament "ratifies or denounces international treaties" (Article 81.2 of the Constitution) and declares war (Article 81.3).

Should the President of the Republic decree martial law in the event of a declaration of war (Article 55.13), the Parliament may request the Constitutional Court to give its binding opinion on the use of armed forces in these circumstance. Following the conclusion reached by the Constitutional Court, Parliament may decide, on a simple majority of members, to bring to an end the application of Article 55.13 of the Constitution (Article 81.3). Article 63.2 states that "Parliament cannot be dissolved under a martial law regime..." so as to ensure the continuity of Parliamentary review of the actions of the President of the Republic.

- The executive
Although the implementation of foreign policy, defence and national security policies lies with the Government, Armenian foreign policy is in fact a domain reserved exclusively to the President. It is the President who represents Armenia in international relations; he determines the general directions to be taken in foreign policy matters (Article 55.7 of the Constitution); he signs international treaties and promulgates intergovernmental agreements; it is he who is the commander-in-chief of the armed forces (Article 55.12 of the Constitution). Furthermore, he grants accreditation to Armenian ambassadors and receives the credentials of foreign ambassadors (Article 55.8). Finally, the President of the Republic is the guarantor of the independence, national integrity and security of the Republic (Article 49 para. 2).

- The people
Popular initiatives in matters of referenda are not envisaged in the Armenian Constitution. Thus the people cannot intervene of their own accord in the country's foreign policy. On the other hand, any amendment to the Republic's Constitution can only be made by means of a referendum (Article 111 of the Constitution), meaning that the people intervene in international relations, notably in the case of modifications to the Constitution when an international treaty contains provisions which are incompatible with the Constitution. Furthermore, according to Article 114 of the Constitution, national sovereignty cannot be the subject of a referendum.

3. AUSTRIA

3.1 Principles

- Identification

The Constitutional Law of 1955 provides that Austria is to be *neutral*. Article 9 of the Constitution sets out the *principle of comprehensive defence* (*umfassende Landesverteidigung*). The *protection of human rights* must be observed in domestic law as a constitutional rule and by virtue of the commitments undertaken pursuant to the ratification of various international instruments in this area.[35]

- Control mechanisms

The *Constitutional Court* has jurisdiction to review the constitutionality of international treaties (Article 140a of the Constitution, inserted in 1988) and also compliance with international law, customary law and convention law (Article 145). Apart from that it has no powers to give rulings in matters of foreign policy. There are no examples of appeals (based on Article 140a and Article 145) which have been declared admissible.

3.2 Implementation

- The legislature

The *establishment of principles of foreign policy* is the result of a procedure which first involves Parliament. Moreover, certain treaties *must be approved by Parliament* (for example where they entail the amendment of existing legislation, they have a political character or they entail financial commitments by the State (Article 50 of the Constitution)). In such cases, however, Parliament's intervention comes at a late stage when the treaty has already been drawn up and signed, and therefore has no real effect. It has never refused to approve a treaty submitted to it. There has been only one case where fresh negotiations took place after the treaty was ratified, but before the instruments of ratification were exchanged.

There are also special rules concerning the consent of the *Principal Commission* of Parliament for certain foreign policy measures in connection with the European Union (Article 23 e) and participation in the operations of the United Nations and other international organisations (Constitutional Law of 1965).

Parliament's *power of control* is exercised in the following ways: right to ask parliamentary questions, right of inquiry, motions, vote of no confidence. Parliament also exercises indirect control over foreign policy by means of the vote on the budget of the Ministry of Foreign Affairs.

Matters are discussed in the Foreign Affairs Committee, Parliament in plenary and the *Council for Foreign Policy* (*Rat für auswärtige Angelegenheiten*). This Council was established in 1976 in response to the need for Parliament to take part in the preparatory stage of negotiations. The Council consists of Members of Parliament, members of the Government and senior officials. However, there is some controversy over the way in which Austria's representatives' scope for action is thus restricted.

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[35] *See also articles 9.2 (introduced in 1981) and 23f (introduced in 1994), as well as the constitutional law of 1965, all of which relate to cooperation with international organisations, in particular with the European Union, and require the Republic to follow the policies of the international organisations in question.*

- The executive

Power to determine foreign policy belongs essentially *to the executive*. However, the principle of legality and the *increasing number of laws* in various spheres which determine the rules which must be observed (concerning, for example, the issuing of passports and visas, cooperation in judicial matters, etc.), which require the executive power to abide by the legislative provisions in force in this area. Many other spheres, however, do not have a legislative basis (for example the establishment and breaking off of diplomatic relations, diplomatic protection, an invitation to an international organisation to establish its seat in Austria, the entire domain of economic and cultural policy).

There is a shift in the balance of powers towards the Government. Within the Government the role of the Minister for Foreign Affairs is becoming less important as *the Head of the Government (in general) as well as other Ministers have an increasing say* with respect to the areas for which they are responsible.

- The people

There is provision for the people to be consulted in the form of a *referendum* where a treaty entails the amendment of a constitutional principle (for example the treaty on accession to the European Union).

4. BELGIUM

4.1 Principles

- Identification
The Belgian Constitution of 1831 contains very few provisions concerning the legal principles applying to foreign policy. When the Constitution was drafted, international relations did not have the importance that they have since acquired. This explains why, although revised as far as international relations are concerned, particularly in 1970 and more especially in 1993, the Belgian Constitution remains very discrete as regards the principles which should guide the international action of the country. However two principles of a constitutional nature should be mentioned in this regard:
a) The principle of independence and of territorial integrity of the country asserted in two constitutional decrees of the National Congress of 18 november 1830 and 24 february 1831. The solemn oath which the King is called to take before acceding to the throne recalls these principles. The King must vow to observe the Constitution and the Laws of the Belgian people, to maintain national independence and the integrity of the territory (article 91 of the Constitution). Moreover according to certain authors, this principle of national independence has a supraconstitutional value.
b) The constitutional provisions in force until 1993, stated that the King "declares war". During the constitutional revision of 1993, this text was modified in the sense that "the King announces the state of war". This change has been explained by the willingness of Belgium to conform to the UN Charter and condemn wars of aggression.

Values like democracy, rule of law, the protection of human rights and individual freedom are not guaranteed as such by constitutional provisions in the field of foreign policy. It should be noted furthermore, that, owing to the period in which it was written, the text of the Belgian Constitution is extremely sober and not strongly ideological; it does not contain any reference to democracy or to the rule of law. These values are indirectly established through the arrangement of technical rules concerning the exercise of power. One can also consider these as guides, from a political point of view, concerning country's foreign policy.

4.2 Implementation
The actors of foreign policy in Belgium can be approached from "a vertical perspective" (given the high degree of federalisation of the country) and from "an horizontal perspective" (in order to show how the separation and the collaboration of powers function at each level as far as international relations are concerned).

4.2.1 Division of powers in the international sphere between the State, the Communities and the Regions ("vertical approach")
This matter is very complex and has caused problems since the beginning of the federalisation of the country in 1970. The constitutional revision of 1993 has opted for a symmetry between the internal and the international competence of the Communities and the Regions. This means that when the federate entities are competent for a matter in the internal sphere, they will also be competent in the international domain.

4.2.1.1 Participation in the creation of international and supranational law

- Conclusion of treaties
In Belgium one should distinguish between exclusive treaties, i.e. those where the State or one or more of the Regions or Communities have exclusive competence, and the mixed treaties, i.e. those where the Federal State and one or many federate entities are competent.

As far as the exclusive treaties are concerned, each entity disposes (following article 167 §3 of the Constitution) of treaty making power. However the governments concerned must first inform the federal authorities of their

intention to enter into negotiations with a view to concluding a treaty, as well as any consecutive legal act that they wish to accomplish (article 167 §4 of the Constitution and article 81 §1 of the Law of 8. August 1980). If the federal government expresses any objections, a consultation takes place within an ad hoc body (the inter - ministerial Conference of foreign policy).

In case of disagreement, the King (i.e. the federal government) can block the negotiating procedure through a royal decree deliberated in the Council of Ministers[36] in four cases restrictively enumerated: a) when the contracting party is not recognised by Belgium; b) when Belgium does not have diplomatic relations with the contracting party; c) when, as a result of a decision or an act of the State, relations between Belgium and the contracting party are broken off, suspended or seriously compromised; d) when the envisaged treaty is contrary to the international or supranational obligations of Belgium. An appeal against the royal decree suspending the negotiation procedure of an exclusive treaty can be made to the Council of State.

Mixed treaties are by far the most common. Neither the Constitution nor the law regulate the status of mixed treaties, but they foresee the obligation for all interested parties (the State, Regions, Communities) to conclude a cooperation agreement on the subject (article 167 §4 of the Constitution, article 92 (2) §4 of the Law of 8. August 1980). This agreement has been concluded on the 8. march 1994: it foresees extremely complicate procedural modalities concerning mixed treaties. In practice, the constituent parties of the Belgian State concerned and the federal authorities, negotiate on an equal footing. All interested parties must consent to the treaty, except in the eventual application of a federal reserve clause. Agreement has to be given by all interested assemblies. As soon as all interested assemblies have given their agreement, the Minister of Foreign Affairs shall establish the instrument of ratification or adherence and shall submit it to the King for signature (article 12 of the Cooperation Agreement of 8 March 1994).

- Belgium's representation in international organisations

A large number of international organisations pose the same problem as the mixed treaties, in the sense that their activities overlap areas which in Belgium come under the responsibility of both the Federation and the federate States. This problematic is not evoked in the Constitution, but in a special law (article 92 (2) §4 (2) of the Law of 8 August 1980), which calls for a conclusion of one or several cooperation agreements. A framework agreement was concluded on the 30 June 1994 between the federal State, the Communities and the Regions concerning the representation of the Belgian Kingdom in international organisations pursuing activities which fall under the joint responsibility of different entities in Belgium.

The Communities and Regions can be represented in the permanent Representation of Belgium to the international organisation concerned, if they wish so (article 4 of the framework-Agreement). A general consultation is organised by the federal Ministry of Foreign Affairs in order to determine the Belgian position (article 5 of the framework Agreement). A complex procedure aiming to seek a consensus is set up. Where there is a lack of time or of an agreement, it is foreseen that the President of the Belgian delegation will adopt "ad referendum" the position which best expresses the public interest. If this procedure is not possible because of the rules in force in the international organisation concerned, or if disagreement persists after consultation, the President of the Belgian delegation can exceptionally abstain (article 9 §2 and 3 of the framework Agreement).

- Belgium's participation to the Council of Ministers of the European Union

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[36] *The reader is reminded that since 1970 the Council of Ministers has equal linguistic representation, with the possible exception of the Prime Minister.*

Article 146 of the treaty has been modified in order to allow the Council to be composed of a representative of each member State at ministerial level, empowered to commit the government of that member State.

A specific cooperation agreement of 8 March 1994 has been concluded in this field. It distinguishes between those matters which are the exclusive responsibility of the federal State, those which are the exclusive responsibility of the Communities or Regions and those for which they have a joint responsibility. In the first case the Belgian State is represented by a Minister of the Federation. In the second case, it is represented by a Community or Regional Minister, with a system of rotation being set up. Finally there is joint responsibility, Belgium is represented by a Federal, Community or Regional Minister, depending on the case, assisted by an "assessor" Minister representing the other level of power. A rotation system is once again set up between the different Communities and Regions.

A permanent coordination is organised within the "Directorate of Administration of European Affairs" of the Ministry of Foreign Affairs. As soon as the Belgian position is defined, it is communicated to the Permanent Representation to the European Communities (article 5 of the Agreement). If there is no time or in case of persisting disagreement, the Head of the Belgian Permanent Representation can exceptionally adopt "ad referendum" the position which is most likely to express the general interest (article 6 §2 of the Agreement).

4.2.1.2 The implementation of international and supranational law

The rules of international and community law do not in general have an impact on the internal division of responsibility. When these norms, for instance a directive, demand that legislative measures be taken, these must be taken by the Federal state, the Communities and the Regions as appropriate according to the internal criteria for division of responsibility.

However, in case of breach of international or supranational obligations, only the Belgian State can be condemned. Up to 1993, in case of condemnation, the Belgian State did not dispose of any means in the internal legal order to enforce the international decision. Since 1993, article 169 of the Constitution allows to the Federation to temporarily substitute for the Communities or Regions at fault, in order to guarantee respect for the international or supranational obligations of the country. This right of temporary substitution is subject to very strict conditions. In particular it implies a first condemnations of Belgium by an international or supranational jurisdiction. The Federal State can only substitute for Communities and Regions in order to implement the decision. The exercise of the right of substitution can cause problems of responsibility, which are subject, as the case may be, to the Control of the Court of arbitration (laws) or the Council of State (executive acts).

Furthermore, the Communities and Regions do not have as such access to international jurisdictions, including the Court of justice of the European Communities. However they can oblige the State to bring a case before an international jurisdiction concerning matters for which they are responsible. In case of joint responsibility, the problem has to be resolved through a cooperation Agreement (article 81 §7 of the special Law of 8 August 1980).

4.2.2 Division of powers in the international field between the executive, the legislative and the courts ("horizontal approach")

This matter will only be dealt as regards the Federal State. What is said on this subject goes concerning the Communities and Regions in the implementation of their international relations. Two important observations are to be made straightaway:

a) In the framework of Belgian Federalism, the organisation and attributions of the jurisdictions are exclusively matter of federal responsibility. Therefore, the following presentation concerning the responsibilities of the Courts in the field of international and community law applies equally to the exercise by the Communities and Regions of their responsibilities.

b) Belgian constitutional law has always been interpreted as establishing a system of purely representative

democracy, thus excluding any recourse to referenda or even a consultation of the electorate's opinion (except, in this last case, at the local level). This prohibition also applies to treaties and more generally to the external relations of the State. This failure to consult the people is currently being criticised in certain milieux. This explains, for instance, the passivity and even indifference of Belgian population towards large-scale reforms, such as the Maastricht Treaty, despite the fact that the Belgian population is traditionally in favour of the European Union.
These general observations having been made, it is important to situate the role of the executive, the legislative and the Courts in the field of foreign policy.

4.2.2.1 The executive
According to article 167 §1 of the Constitution, "the King is in charge of international relations, without causing prejudice to the responsibility of the Communities and Regions to regulate international cooperation, including the conclusion of treaties in areas which come under their responsibility by virtue of the Constitution or in accordance with it". The implications of this text are twofold. On the one hand it confers upon the federal authorities responsibility, in principle, for the conduct of foreign policy, the responsibility of Communities and Regions in this regard appearing clearly as an exception. On the other hand, it confers responsibility upon the King, within the framework of the federal State.

By King is meant the Federal Government and especially the Minister of Foreign Affairs, who assumes the direct conduct of the country's foreign policy. However certain important questions, and particularly those concerning European Union are directly decided by the Prime Minister. Any act of the King in this field as in any other, can only take effect if it is accompanied by the countersignature of a Minister.

The King, as a person, can therefore have only a moral influence, through his opinions and advice within the framework of the "singular colloquium" with his Ministers. Historically, the Belgian King have always had an intense interest in the country's foreign affairs, and have played an active role in this field. It has even been claimed that until the Second Word War the King could, as far as military operations are concerned, act without ministerial countersignature. These doctrines are out of date, as one can note a slow, but constant erosion of royal prerogatives in the field of foreign policy a s in other fields.

4.2.2.2 The legislature
The legislative power plays essentially a role of control. This control is expressed by all the classical mechanisms of parliamentary control and by agreement to the treaties. It has been reinforced in the field of community law.

- General mechanisms of parliamentary control

The Assemblies can use all classical instruments of parliamentary control in the field of Government foreign policy: questions, interpellation, resolutions, enquiry commissions. It has to be noted, however, that since the reform of 1993, the right to ask questions and to call into question the political responsibility of the Government and it's Ministers fall exclusively under the responsibility of the House of Representatives. However, the senate has retained it's right to enquire and can use it concerning the conduct of the country's international relations. For instance, a parliamentary commission is currently in progress in the Senate concerning certain aspects of the policy exercised by Belgium in Rwanda.

- The approval of treaties

Common law
Since the reform of 1993, all treaties, including in principle agreements in simplified form have to be submitted to

the assemblies for approval[37]. Before this date, only certain treaties (in fact quite numerous) were submitted for approval. Although the Senate has lost a lot of it's powers since 1993, it remains on an equal footing with the House of representatives as far as the approval of treaties is concerned. The Constitution even foresees that the bills of law approving treaties have first to be presented to the Senate, before being transmitted to the House of representatives (article 75 (3) of the Constitution). One can see here the start of a certain specialisation of the senate in international affairs.

In Belgian law, the approval has to be seen, in principle, as a simple formal law which enables a treaty to take effect in domestic law. In theory this is not a condition for the ratification of a treaty and can take place after this. In practice however, the ratification takes place after the approval of a treaty, in order to avoid a treaty binding Belgium internationally, being refused application in domestic law. This solution is imposed by the cooperation Agreement of 8 March 1994 concerning mixed treaties: The King can only ratify a mixed treaty after all the required approvals have been given (c.f. supra). On the contrary the denouncement of a treaty does not require any legislative intervention. Although the problem is not directly evoked by the Constitution, it has always unanimously been admitted that the publication of treaties constitutes a necessary condition of their obligatory force.

Treaties and specific acts
Certain treaties or acts are submitted to specific rules:

a) Concerning treaties relative to the territorial limits of the State, the King has to receive the prior authorization of the Houses of Parliament (article 167 §1 (3) of the Constitution).
b) Article 34 of the Constitution, introduced in 1970, foresees that "the exercise of determined powers can be attributed by a treaty or a law to institutions of public international law". This provision aims to respond to the criticisms previously expressed concerning the constitutionality of the transfers of responsibilities that took place within the framework of the European Union. Thus, the ratification of the Maastricht Treaty in Belgium made it necessary to revise the Constitution on only one point, that concerning the right of nationals of other EU member States residing in Belgium to vote in local elections. It should be noted that the Belgian Government ratified the Maastricht treaty without revising the Constitution, although it was necessary to do so in this regard.
c) A new provision was introduced in 1993 and aims to reinforce democratic control of the Community treaties. Article 168 of the Constitution provides that, from now on, "as soon as negotiations are instigated in order to revise the treaties creating the European Communities and the treaties and acts which have modified or completed them, the chambers will be informed. They will be aware of the treaty before it is signed". It is a question of anticipating the assemblies' control in this regard and giving them a certain right to examine the negotiations themselves. The Community treaties being, in Belgian law, a mixed treaty, parallel information is ensured at the level of the Council of the federate entities (article 16 §2 (2) of the special Law of 8 August 1980).
d) In order to offset the "democratic deficit" in the adoption of secondary community law, it is foreseen that the proposals of regulations and directives are transmitted to the Houses of parliament and to the different Councils, as soon as they have been transmitted to the Council of the European Communities. The Houses of Parliament and the Councils can give their opinion on these proposals to the King and to the Governments of the federate entities respectively (article 92 of the Law of 8 August 1980).

- The courts
The Courts can be brought to exercise their control over diverse acts belonging to the country's foreign policy. Therefore the Council of State could be asked to control whether the King has acted within the framework of the

[37] *The same goes for the assemblies of the federate entities as far as mixed treaties or exclusive treaties concluded by the executives of these entities are concerned.*

conditions prescribed by law in suspending the negotiations envisaged by the Government of a Community or Region, with a view to concluding a treaty concerning exclusively federate matters (c.f. supra). Here also, the Court of arbitration (Constitutional Court) or the Council of State could be asked to control if the action of substitution of the federal power in the form of a law or a royal order, corresponds to the conditions foreseen by the Constitution and the law.

Authors assert however, that certain acts of foreign policy fall within the category of Government acts and are thus not subject to any jurisdictional control. This view appears to be largely theoretical and does not seem to be the case in practice.

In Belgian law, directly applicable conventional law is superior to the (Belgian) laws even if they are posterior. Two criterions are used to qualify directly applicable conditions: an objective criterion (precise and complete nature of the provision) and a subjective criterion (the willingness of the parties). Case-law tends to favour the first criterion and has a large conception of the provisions called directly applicable.

The primacy of directly applicable conventional law over posterior laws (and a fortiori the primacy of community law, primary or secondary, directly applicable) does not result from the Constitution itself, but from a decision of the Court of Appeal of 27 May 1971 (S.A Fromagerie franco-suisse Le Ski). If this decision is unanimously accepted concerning the primacy of directly applicable international law over domestic law (and a fortiori over the sources of internal law inferior to the law), the same is not true concerning the relation between international law and the Constitution it self.

Two different theses are currently under discussion. Certain authors contend that directly applicable conventional international law has a primacy over the Constitution it self following to the Courts decision of 27 May 1971, which considers that the primacy of international law is founded upon it's very nature, and that this primacy concerns any internal rule, without distinction. The Court of Arbitration, within the limits of it's responsibilities (control of division of responsibilities between the State and it's entities, control of the principle of equality and of the constitutional principles concerning education), subjects to control the laws (or decrees) approving treaties and through these laws or decrees, the treaties them selves. The Court of Arbitration considers itself therefore competent to declare that a treaty in force in the domestic legal order should not be applied by the courts, because, for instance, it violates the principle of equality. This problematic is at the heart of internal doctrinal controversy which is far from been resolved.

5. BULGARIA

5.1 Principles

- Identification
According to Article 24.1 of the Constitution, "the foreign policy of the Republic of Bulgaria shall be established *in accordance with the principles and norms of international law*". Article 24.2 provides that "*the fundamental objectives of the foreign policy of the Republic of Bulgaria* shall be national sovereignty and the independence of the country, the welfare, rights and fundamental freedoms of Bulgarian citizens and assistance in the establishment of an equitable order". Values such as democracy and human rights are also referred to in the preamble to the Constitution as supreme principles which bind the public powers in the determination of their conduct.

Bulgaria's intention to become part of the European Union means that it must endeavour to comply with its international undertakings. It is for this reason that mechanisms have been established to ensure compliance with the European Association Agreement.

- Control mechanisms
Observance of the legal principles which must be observed in the definition of foreign policy is considered to be guaranteed owing to the *political control of Parliament*. Furthermore, the *Constitutional Court* has power to review all acts of the Government and Ministers, including those connected with foreign policy. There have been three cases where the Court has ruled on foreign policy matters but these decisions do not constitute a body of case-law.

5.2 Implementation

Decision-making power is divided between Parliament, which defines the general directives of foreign policy, the Government, which directs and implements foreign policy, and the President, who represents the country abroad.

- The legislature
The National Assembly discusses and *expresses its confidence in the Government's programme*. It continuously supervises the implementation of the Government's policy. Only the National Assembly discusses *questions of major importance*, such as war and peace. The same applies to State borrowing. The National Assembly *ratifies and denounces certain treaties*, namely those of a political or military nature, those entailing financial obligations for the State, etc.

The *Foreign Affairs Commission* plays an important part in determining the country's foreign policy. Members of the National Assembly may debate important questions of foreign policy and request reports from the Government, which will be discussed within the Foreign Affairs Commission.

- The executive
All fundamental *initiatives* in foreign policy are in practice a matter for the Government. The heads of diplomatic representations and the permanent representatives of the Republic of Bulgaria at international organisations are *accredited and recalled by the President* of the Republic on a proposal from the Council of Ministers.

- The people
There is provision for consultation of the people by *referendum*, but this does not actually happen in practice.

6. CANADA

6.1 Principles

- Identification

In the conduct of its foreign policy, Canada considers itself bound by the international treaties and agreements it has ratified. It also conduct its foreign policy in a manner consistent with general principles of international law, including customary principles. It respects the decisions of international courts and tribunals to whose jurisdiction Canada has subjected itself, and settles international disputes in accordance with the Charter of the United Nations and decisions and resolutions of the United Nations as well as the Security Council. The Government recalls its political loyalty to values such as democracy and human rights and acknowledges the influence which Canada's membership in such international organisations as the UN, NATO and the OSCE has in practice on the formulation of its foreign policy.

- Control mechanisms

Legislative measures adopted domestically in connection with foreign policy must comply with the Canadian Charter of Human Rights and Freedoms, and administrative measures adopted domestically in connection with foreign policy must comply with statutory, civil code or common law including the principles of the rule of law, as well as with the Charter.

6.2 Implementation

Treaties are negotiated and concluded by the federal government. If the subject matter of the treaty falls under provincial jurisdiction in Canadian constitutional law, then the provinces will be consulted during the process of negotiating and concluding the treaty. Representatives from the provinces may, in such a case, accompany the Canadian delegation to negotiating sessions. In addition, non-governmental organisations are often consulted on the treaty as it is being negotiated, and may also accompany the Canadian delegation to negotiating sessions. The acts of signature and ratification are authorized by the executive branch of the federal government. Treaties are implemented in a number of manners, and legislation will be enacted if Canada's obligations cannot otherwise be implemented. If provincial implementing legislation will be required to fulfill the obligations of the treaty, either the consent of the provinces to enact such legislations obtained prior to Canada's signature of the instrument, or Canada will seek the insertion of a federal state clause in the treaty. Often treaty obligations can be implemented by administrative actions or under the authority of previously existing legislation. In such cases, no new legislation is required.

7. CROATIA

7.1 Principles

- Identification
Foreign policy must comply with the Constitution and legislation: there is no further requirement. Treaties and decisions of the international organisations of which Croatia is a member are part of the domestic legal order and their force is higher than that of legislation (Article 134 of the Constitution). They must therefore be observed when the directions to be taken by foreign policy are determined. Accordingly, *values* such as democracy, the rule of law, human rights and fundamental freedoms, *in so far as they are guaranteed by treaties*, must be taken into account.

- Control mechanisms
The principles of foreign policy established by treaties are implemented by legislative provisions. Compliance with these principles is ensured by the normal controls employed to ensure compliance with laws and treaties. There is no relevant case-law.However the judicial control of foreign policy questions is excluded neither by the Constitution neither by the law. There are no precedents of such cases. Thus it is possible that individuals on national ethnic or religious minorities dispute certain acts of foreign policy which they believe jeopardise their interests. It appears even that a complaint to the Constitutional Court would be possible if an action of foreign policy was in contradiction with the Constitution. Given the absence of previous jurisprudence in this area, it is difficult to foresee the scope of judicial control in case of dispute.

On the other hand the political control exercised by the Parliament over the Government ensures the respect of principles defining the foreign policy of the country. The minister of foreign affairs regularly presents the policy implemented in different domains to the members of the Parliament This presentation is followed by questions, comments or criticism by the deputies.

7.2 Implementation

- The legislature
According to Article 2 of the Law on Foreign Policy, Parliament may *adopt directives on foreign policy. Furthermore, Parliament is responsible for ratifying treaties* which require legislation (or the amendment of existing legislation), military or political international agreements and those entailing a financial commitment on the part of the Republic. The same applies in the case of agreements establishing international organisations or alliances. The same procedure must be observed where these treaties are denounced or the reservations expressed in regard thereto are withdrawn.

- The executive
The *President* represents the Republic in its external dealings. On a proposal from the Government, he decides to send diplomatic missions, he *appoints and recalls* the diplomatic representatives of the Republic, he takes part in the conclusion of the treaties which *he concludes* on behalf of the Republic. The Head of State has fundamental power of decision as regards the *recognition of States* and the *establishment of diplomatic relations*.

The *Government* may *conclude treaties relating to economic and social activities* and also those connected with the protection of the environment (Article 2.2 of the Law on the conclusion and application of international treaties). The Minister for Foreign Affairs implements foreign policy decisions which have already been taken.

- The people

Decisions concerning the participation of the Republic in an association must be adopted by referendum (Article 135.4 of the Constitution), as must those *concerning the withdrawal of Croatia from an international organisation* (Article 135.5). Furthermore, pursuant to Article 120 of the Rules of Procedure of the Assembly of Representatives of the People, *any citizen may take the initiative to begin a procedure which might lead to the adoption of a law*, including in matters of foreign policy (popular initiative).

8. CZECH REPUBLIC

8.1 Principles

- Identification

Depending on whether or not the person empowered to conclude treaties occupies a place at the summit of the hierarchy of powers, the legal principles applicable to that person are different. Thus a territorial authority, a member of the administration or a member of the diplomatic corps must, when concluding an agreement, observe both the statutory provisions and the regulations applicable. In the case of the Government and the President of the Republic, it is clear that they will not be subject to the constraints of any regulations or decrees applicable, but that they will be required to observe the law and constitutional principles. Lastly, as regards the legislature, only the constitutional provisions and any possible general principles of law limit its power to determine the directions taken by foreign policy. It is also necessary to mention that the constituent power (the people itself, by means of a referendum or a strong majority in Parliament) may amend the Constitution. Consequently, *where one speaks of legal principles applicable to foreign policy, these clearly vary according to the position which the persons responsible for foreign policy occupy in the hierarchy of norms*.

- Control mechanisms

Pursuant to Article 4 of the Constitution, rights and fundamental freedoms are guaranteed by the judiciary. The *Constitutional Court* may be called upon to intervene where human rights are violated. This mechanism is also effective where this *violation has occurred in the context of foreign policy*. There is no relevant case-law, however.

8.2 Implementation

- The legislature

Determining the directions to be taken by foreign policy is a matter for Parliament (Article 39.3 of the Constitution). Furthermore, Parliament exercises political *control* over the Government, and this also applies to foreign policy (Article 68.1 of the Constitution). Members of Parliament have the right to question the Government or its members (Article 53.1 of the Constitution).

Parliamentary committees are established, including in the sphere of foreign policy. They make draft resolutions, which are generally taken up by Parliament. Budget debates may also influence the formation of foreign policy.

- The executive

The *President* represents the country abroad. He *signs and ratifies international conventions*. The President *appoints and recalls* the heads of diplomatic missions. He also appoints and dismisses the Minister of Foreign Affairs, on a proposal from of the Prime Minister.

The *Government* is at the head of the executive power. It may *represent the country abroad*. It may bind the country by *declarations* or measures adopted in the sphere of external relations, but there are no provisions which grant the Government actual powers in this area. More specifically, the Minister of Foreign Affairs is responsible for representing the Republic abroad. Other organs within the Administration may also be empowered to conclude treaties. The *members of the diplomatic corps* report to the Government.

- Decentralised authorities

Territorial authorities are empowered to cooperate with other authorities abroad and to participate in associations of local bodies (Act of Parliament no. 367/1990 and Territorial Authorities Code). *Agreements concluded in this way cannot exceed the territorial authorities' statutory powers*.

9. DENMARK

9.1 Principles

- Identification
The *Constitution* makes *no reference* to principles which must be observed in the definition of foreign policy and does not determine its aims. However, certain ordinary *laws* may define the *aims* of the conduct of foreign policy in their particular sphere.

Principles such as democracy, the rule of law and the protection of human rights and individual freedoms are extremely important in the conduct of Danish foreign policy, but there is no indication that they have any other than political or moral value. Danish diplomatic and consular missions report on compliance with these values in the various countries. Reports of the United Nations or NGOs are also taken into consideration.

9.2 Implementation

- The legislature
The *Foreign Policy Committee*, whose members are appointed from among Members of Parliament, must be consulted *before decisions of major importance are adopted* (Article 19.3 of the Constitution). Moreover, a *special parliamentary commission was set up following Denmark's accession to the EEC*.[38] The Government is required to *inform* this committee of decisions of the Council of Ministers which will be directly applicable in the Danish legal order or the application of which will require the agreement of Parliament. In accordance with a practice established since 1973, all major issues relating to Denmark's policy in European affairs are discussed within the Committee, which then provides the Minister for Foreign Affairs with a "negotiating mandate". In 1972 a *Foreign Affairs Committee specialising in development assistance* was set up. The increase in the number of parliamentary committees which must be consulted before foreign policy is determined and implemented has enabled the legislature to increase its influence in an area traditionally that of the executive.

Under Article 19 of the Constitution, *certain acts require Parliament's consent if they are to have legal value*. These include acts which increase or reduce the territory, those which require Parliament's consent before they can be implemented and other acts of major importance. Parliament's consent is also required for the termination of any treaty which came into force with its consent. Lastly, military force cannot be used against foreign States without the consent of Parliament, except for reasons of defence against armed attack (Article 19).

- The executive
The Constitution (Article 19) provides that "*the King shall act on behalf of the Realm* in international affairs". However, it is the *Ministers who are responsible for the conduct of Government* (Article 13 of the Constitution). It is thus the Government that acts on behalf of the Realm.

The Government draws up the essential principles of the conduct of foreign policy. The Minister for Foreign Affairs plays an important role in this process. In practice, Government decisions are often influenced by parliamentary resolutions adopted by majority not comprising the Government (since the country traditionally has minority Governments). These resolutions have political rather than legal value.

- The people
Article 20 of the Constitution provides for a *referendum* in certain circumstances where *sovereignty is to be*

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[38] *European Economic Community.*

delegated to international authorities. Parliament may also submit *other questions* to a referendum, including in the sphere of foreign policy. Certain laws cannot be submitted to referendum, however. Danish law makes no provision for *popular initiative*.

10. ESTONIA

10.1 Principles

- Identification
The preamble to the Constitution contains requirements on State behaviour. In particular, *the following principles* are mentioned: *protection of internal and external peace*, security and social progress and the *preservation of the nation and its culture* throughout the ages.

Article 1 proclaims the *independence* of Estonia and the *inalienability of its sovereignty*. Other provisions of the Constitution refer to principles which much be observed in the determination of foreign policy. Thus Article 122 provides that Estonia's territorial frontiers are defined by the Tartu Peace Treaty of 2 February 1920 and other international treaties. The same applies to its sea and air borders. Article 123 prohibits the conclusion of treaties which are contrary to the Constitution.

The Law on Foreign Relations (1993) regulates foreign relations and the jurisdiction of the government institutions established for that purpose. The fact that, according to Article 1 of this law provides that the foreign relations of the Republic are to be regulated by law *is regarded as a guaranteed of democracy, the rule of law and the protection of human rights* in the conduct of foreign affairs. Furthermore, it is provided that foreign policy issues not addressed in the Constitution, the Law on Foreign Relations or international law are to be regulated according to the *usual international practices* (Article 1).

- Control mechanisms
Article 139 of the Constitution establishes a control mechanism in respect of these principles. A "*Legal Chancellor*" is responsible for monitoring whether the legislation adopted by Parliament and Government measures are compatible with the law and the Constitution.

The *Supreme Court* also ensures compliance with legal and constitutional rules. Article 152 provides that any law or other legal measure found to be contrary to the provisions or spirit of the Constitution is to be declared void. Article 15 of the Constitution provides that anyone whose case is heard by a court may require that the constitutionality of the relevant law or measure be examined. The courts declare unconstitutional any law or other procedural measure which violates the rights and freedoms established in the Constitution.

10.2 Implementation

- The legislature
Article 1 of the Law on Foreign Relations provides that the *foreign relations of the Republic are to be regulated by law*, as is the action of Parliament, in accordance with the Constitution. Parliament may *adopt directives on foreign policy*, decided to *hold a referendum*, ratify and denounce treaties (Article 121 of the Constitution) and, on a proposal of the President, *declare war*, a state of *mobilisation* or demobilisation. According to Article 5 of the Law on Foreign Relations, Parliament is to adopt decisions on the maintenance of foreign relations with other countries. It deals with declarations and appeals within the sphere of foreign policy, it communicates with other Parliaments and other inter-parliamentary institutions, determines the role of the army in international affairs, establishes the hierarchy of diplomatic positions and the procedure for filling diplomatic posts and discusses foreign policy and its implementation at least twice a year.

Article 121 of the Constitution provides that *Parliament is to ratify and denounce treaties* which alter the State frontiers, those whose implementation requires the enactment or amendment of legislation, those whereby Estonia accedes to international organisations, those whereby Estonia undertakes military or financial obligations and

those which require ratification.

A *special commission* on foreign affairs has been established pursuant to Article 71 of the Constitution.

- The executive

The *President* of the Republic represents Estonia abroad, *appoints and recalls* the diplomatic representatives of the Republic, *signs letters ratifying or denouncing treaties* and is head of the armed forces. He *accepts the credentials* of foreign diplomatic representatives (see Article 77 of the Constitution and Article 6 of the Law on International Relations).

The *Government* is responsible for coordinating foreign relations and for *implementing* foreign policy. It submits the various agreements to Parliament to secure their ratification or denunciation. It *recognises the legal existence of Governments* or nations. It *concludes treaties* on behalf of the Republic, *negotiates*, *establishes* and *decrees diplomatic relations* and regulates other foreign policy issues which are not within the competence of Parliament or the President.

- The people

Article 105 of the Constitution provides that Parliament may submit a draft law or other national issues to a *referendum*. The results of such a referendum are binding on all State organs. However, Article 106 of the Constitution provides that questions connected with the budget, taxation, the financial obligations of the State or the *ratification or denunciation of international treaties cannot be submitted to a referendum*.

11. FINLAND

11.1 Principles

- Identification

The Constitution[39] contains *no principles on foreign policy*. Section 1 of the Constitution Act provides that the Constitution is to protect the *freedoms and rights of individuals* and human dignity. These principles seem to be generally applicable to all activities of the public powers, including those relating to foreign policy. The promotion of justice in society is also laid down as an aim of the country's policy.

Treaties do not directly form part of the domestic legal order, but require implementing measures in order to be applicable.

The Constitution contains no provisions requiring the approval of treaties which limit sovereignty. Section 1 of the Constitution expressly declares though, that Finland is a sovereign Republic. It is a clear and established interpretation of this constitutional rule, that treaties which limit national sovereignty in a more essential matter violate the Constitution. *Treaties limiting the sovereignty in this manner must therefore not only be submitted to the approval of the Parliament, but also be incorporated by the Parliament as exceptions to the Constitution, that is with a majority of two thirds of votes cast.*

- Control mechanisms

In principle, all administrative decisions with the exception of those of the President are subject to judicial review. This is only possible upon application. On the other hand, subordinate legislation and *decisions adopting principles of foreign policy are not as such susceptible of appeal.* However, section 92 of the Constitution provides that where a decree is contrary to the Constitution or another Act of Parliament the courts must not apply it. Where the principles of foreign policy are applied in an individual case their legality may be examined when the case is examined. *Where the Administration exercises its discretionary power in good faith its decisions cannot be called in question by the courts*.

However, *Parliament may declare that no appeal lies against certain administrative decisions*. This provision is not entirely compatible with the 1995 constitutional reform on fundamental rights, which recognises that everyone is entitled to have a decision relating to his rights and duties reviewed by a court. On the other hand, even where no ordinary appeal lies, *an extraordinary appeal against administrative decisions*, including those of the President of the Republic, may be presented to the Supreme Administrative Court on the basis of procedural errors, other grave errors of law or substantial new evidence.

There are also other indirect means of controlling the conduct of foreign policy. The Chancellor of Justice[40] may *object if a member of the Government acts unlawfully*. A report may be presented to the President. There is also an ombudsman responsible for ensuring that human rights are observed by the public powers in the conduct of

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[39] *The Constitution consists of two fundamental laws, the Constitution Act (1919) and the Parliament Act (1928); there are also two other fundamental laws, the Ministerial Responsibility Act and the Act on the High Court of Impeachment.*

[40] *The Chancellor of Justice is not a minister, but a permanent official appointed by the President of the Republic. The main function of the Chancellor of Justice is to secure legality in public administration. He shall be present at all sessions of the Council of Ministers.*

their policies. Impeachment proceedings may also be commenced. The President of the Republic himself may be subject to such proceedings, in case of high treason.

The role played by the *Supreme Administrative Court* as *guardian of the Constitution* is relatively modest. There is, primarily, a preventive control of the legality of various measures before they are submitted to Parliament. The courts are not entitled to declare an Act of Parliament unconstitutional when it has been duly signed and promulgated. They are only able to apply a principle according to which laws are to be interpreted in the way which renders them most consistent with the Constitution. Only decrees or regulations are subject to control of their legality and constitutionality. There is no significant body of case-law on the matter.

11.2 Implementation

The President of the Republic, the Government and Parliament are responsible for drawing up the essential principles of the conduct of foreign policy.

- The legislature

The legislature must *approve treaties* after they have been concluded if they contain provisions which fall within the legislative domain or where the Constitution so requires. Parliament's approval is necessary where a reservation is to be withdrawn or where an Act of Parliament is necessary to ensure compliance with the commitments undertaken at international level. Decisions concerning war or peace are adopted by the President with the consent of Parliament. Similarly, peace treaties must be approved by Parliament.[41] Parliamentary approval is not required, however, for the implementation of unilateral action. Furthermore, *Parliament's approval has not always been deemed necessary if existing legislation corresponds to the treaty in question*. By legislative authorisation, Parliament may *delegate* certain of its legislative powers to the President or other State organs.

Following the adoption of the Act of Accession to the EEA,[42] a new section 33 (a) was inserted into the Constitution. *According to this provision, Parliament is to participate in the preparatory work related to matters which fall to be decided by international organisations*. Similarly, Finland's accession to the EU[43] required the amendment of the preparatory and decision-making procedures, in order to satisfy the need to protect democracy and effectiveness. Thus it was provided that the special Foreign Affairs Committee could require Government reports on specific issues of foreign policy. The Government shall inform the Foreign Affairs Committee of the Parliament on matters concerning the common foreign and security policy of the European Union, and especially upon decisions taken by the European Council.

The duty of the Government to inform parliamentary bodies extends however beyond matters handled by the European Council. The duty covers i.a. all proposals for measures to be decided by the Council of ministers of the European Union, or pursuant to powers delegated by the Council, by the Commission or any other organ, in so far as the decision would concern matters which would, save for the Union competence, fall within the competence of the Finnish Parliament. Any such proposal which has come to the Government's notice shall be communicated for consideration by the Grand committee of the Parliament or, in case of matters concerning the Union's common

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[41] *Paragraph 1 of section 33 of the Constitution has not been interpreted as always extending to the conclusion of an interim peace treaty or a treaty of alliance.*

[42] *European Economic Area.*

[43] *European Union.*

foreign and security policy, by the Foreign Affairs Committee. The committee concerned shall furthermore be informed about the stage of consideration of the matter in the Union and of the Government's own position in this matter. The committee may also deliver an opinion to the Government.

According to paragraph 2 of section 48 of the Parliament Act, reports must be given to the Foreign Affairs Committee of Parliament where this is requested. *Questions* may be put to the Ministers and there is also a *right of interpellation*.

Once it has been informed, *Parliament may then express its views on foreign policy. These views are prepared by the Foreign Affairs Committee*. On the basis of the Government reports concerning the outcome of the resolutions adopted by Parliament in foreign policy matters, the Committee may propose that Parliament should withdraw its confidence from the Government.

Politically, the Government is responsible to Parliament. *Immediately after being appointed, the Government presents its programme to Parliament. Parliament discusses the programme and decides whether or not to give the Government a vote of confidence*. The possibility of *withdrawing its confidence from the Government* is therefore an indirect means whereby Parliament may control the Government's foreign policy.

Furthermore, on the basis of its *budgetary powers* Parliament may avoid foreign policy projects of the President which require new funding. Parliament may thus refuse to give its consent to expenditure which it has not approved. Moreover, where a foreign policy act of the President requires legislation the President must comply with what Parliament has decided or abandon the implementation of that act.

- The executive

Section 33 of the Constitution Act provides that "*Finland's relations with foreign powers shall be directed by the President*". Decisions concerning war or peace are adopted by the President with the consent of Parliament. The President is also commander of the armed forces.

The Government decides upon the preparation at national level of the decisions which have to be taken at European Union level. The Government also decides upon the other measures to be taken in Finland in relation to these European Union decisions insofar as these do not require parliamentary approval or a presidential decree. Lastly, the increase in the number of treaties has had the consequence that a significant number of decisions are henceforth within the competence of the Minister for Foreign Affairs.

- The people

The people may express its views by *referendum* (section 22 a of 1987). However, there is no provision for a *popular initiative*.

- Decentralised authorities

The province of Aland has a fairly large legislative autonomy[44]. In addition to the provincial legislature, the province of Aland has an executive organ of its own. If an international treaty includes provisions belonging to the legislative competence of the province of Aland, the entering into force of such provisions in the province presupposes that the provincial legislature adopts legislation enforcing the treaty in the province. This entails, in practice, that such a treaty can only be ratified after such enforcing provincial legislation has been adopted.

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[44] *The legal foundation of this autonomy is the Constitution of Finland of 1919 and the "Self Government Act" of Aland.*

The national Government shall inform the Governing Board of the Province of Aland of any matters under preparation in the organs of the European Union in case such matters are within the competence of the province or are otherwise of special importance to the province. The Governing Board is entitled to participate in the preparation of such matters within the National Government. In regard to matters within the competence of the province, the Governing Board formulates the positions of Finland concerning the application of the common policy of the Union in the province. A person nominated by the Governing Board shall be proposed as one of the representatives of Finland in the Committee of Regions in the European Community.

12. FRANCE

12.1 Principles

- Identification
The French Constitution refers in its preamble to the attachment of the French people to human rights and the principles of national sovereignty as defined in the Declaration of 1789 and confirmed and supplemented in the preamble to the Constitution of 1946. According to the *preamble, the Republic, faithful to its traditions, observes international law and in particular the principle pact sunt servanda*. It therefore observes the principles of self-determination of the peoples and respect for established frontiers.

France's foreign policy must therefore be consistent with these broad principles. However, that applies only to its own activities. *France cannot require other States to obey the same values*, as otherwise it might be accused of interfering in their domestic affairs. The most it can do is to encourage them and to continue to set an example. France has let it be known on many occasions that it wished certain legal systems to be made more liberal or more democratic, but it cannot make its commercial relations with other countries conditional upon the extent to which its partners observe the principles from which France takes its inspiration.

The signature of the Maastricht Treaty required the amendment of the Constitution, which indicates the existence of certain constitutional provisions which should be respected even in connection with France's foreign policy. Article 88.2, which was inserted into the Constitution, provides that France consents to the transfers of powers necessary for the establishment of European Monetary Union, and also to the determination of the rules associated with the crossing of the external frontiers of the Member States of the Community. Similarly, Article 88.3 provides for the right to vote and eligibility to stand in French municipal elections for non-French nationals of the EU.

The new Article 53.1 of the Constitution provides that the Republic may conclude, with European States linked by the same undertakings as those of France on asylum and the protection of human rights and fundamental freedoms, agreements determining their respective powers to examine applications for asylum presented to them. This, too, is a *sovereign power of France*. *In order for this power to be relinquished in favour of an international organisation pursuant to a treaty it was necessary to revise the Constitution*.

On these points the Constitutional Council had held that the French Constitution was opposed to the conditions laid down by the Maastricht Treaty, since these two domains were within the national sovereignty of each State. *The inalienability of national sovereignty is therefore a legal rule which is binding on foreign policy*.

- Control mechanisms
All matters relating to the conduct of France's foreign relations engage the sovereignty of the State and legal acts associated with diplomatic negotiations are regarded as *acts of State which are not susceptible of appeal*. Only *a separable act* may be brought before the administrative courts by an application to set it aside on the ground that it is *ultra vires*.

As regards treaties themselves, the *Constitutional Council* may be required to determine whether they are compatible with the Constitution (Article 54 of the Constitution). Authorisation to ratify or approve the international undertaking can only be given after the Constitution has been amended. This applied in the case of the Maastricht Treaty, which was only ratified following a constitutional amendment.

12.2 Implementation

- The legislature
According to Article 53 of the Constitution, *Parliament* is responsible for *ratifying and approving peace treaties, treaties concerning trade,* those relating to an international organisation, those whereby the State undertakes a financial commitment, those which amend legislative provisions, those relating to individual status and those which entail the cession, exchange or acquisition of territory. Although France has accepted that part of its sovereign powers be transferred to the Community institutions it has done so only on condition that *Parliament*, representing national sovereignty, is *consulted* by the Government *in respect of every proposed Community measure which includes provisions of a legislative nature*.[45]

Furthermore, when the *budget is being debated* the vote on the appropriations to the Minister for Foreign Affairs almost always involves a debate on the directions which France's foreign policy should take.

Questions may be put to Ministers, but the ensuing debate is limited to the subject under discussion. Consequently, it is important for the Minister for Foreign Affairs to provide regular information to the relevant *special committee* concerning the main issues of foreign policy. Furthermore, it should be noted that when the Prime Minister presents his action programme and seeks confirmation by Parliament, a large part of this programme concerns foreign policy. Thus Parliament indirectly gives its consent to the broad axes of foreign policy *by its vote of confidence in the Government*.

- The executive
The *President of the Republic* is invested with the bulk of powers in respect of foreign policy. He is responsible for ensuring compliance with the Constitution and for ensuring the proper functioning of the public powers and the continuity of the State. *He is the guarantor of national independence, the integrity of the territory, observance of agreements* of Community and treaties Article 5 of the Constitution). The fact that he does all these things means that foreign policy is in his hands.

More specifically, the President is responsible for *accrediting ambassadors* and special envoys to foreign powers, while their counterparts from other countries are accredited to the President (Article 14). He is the head of the armed forces (Article 15). He *negotiates and ratifies treaties* and is informed of any negotiation aimed at concluding an international agreement which does not require to be ratified (Article 52).

The ambiguity of the wording of the Constitution regarding the exact division of powers between the President on the one hand and the Government and the Prime Minister on the other hand means that the conduct of foreign policy is a delicate matter. It is the *Government which, according to Articles 20 and 21 of the Constitution, determines and conducts the policy of the nation* and which has the armed forces at its disposal (Article 20), while the Prime Minister is responsible for national defence.

- The people
The people may be consulted in the form of a *referendum* on a foreign policy issue. According to Article 11 of the Constitution, any *draft law designed to authorise the ratification of a treaty* which, although not contrary to the Constitution, would have *effects on the functioning of the institution*s may also be submitted to a referendum. This technique was employed in connection with the ratification of the Maastricht Treaty. Only where the

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[45] *Article 88.4 of the Constitution requires the Government to lay before the National Assembly and the Senate draft Community measures which include provisions of a legislative nature as soon as they are transmitted to the Council of the Communities.*

referendum has been in favour of adopting the draft law does the President of the Republic promulgate it.

13. GEORGIA

13.1 Principles

- Identification
According to the preamble to the Constitution, "the people of Georgia is firmly resolved to guarantee the universally recognised *human rights* and fundamental freedoms, to strengthen the independence of the State and *peaceful relations* with other peoples". Treaties which are compatible with the Constitution take priority over other domestic normative acts (Article 6 of the Constitution). They therefore also contain principles which must be observed in the determination of the country's foreign policy.

- Control mechanisms
The protection of human rights in foreign policy is ensured by the Committee for the Protection of Human Rights and International Relations. The Constitution also provides for this protection to be ensured by an ombudsman and the *Constitutional Court*.

13.2 Implementation

Parliament determines foreign policy (it gives its consent to diplomatic representatives proposed by the President, it has powers connected with the budget and the ratification and denunciation of treaties and it controls the foreign policy conducted by the executive). Parliament defines the principles of foreign policy.

The President implements foreign policy, he negotiates with other States, he concludes treaties, with the consent of Parliament, *he appoints and dismisses diplomatic representatives and he accepts the credentials* of foreign ambassadors (Article 73.1 a). According to the Constitution there is no Government: Ministers serve directly under the President.

The people expresses its views by referendum. Two hundred thousand voters may initiate such popular consultation in matters of foreign policy.

14. GERMANY

14.1 Principles

- Identification
The entire German constitutional structure is founded on the concept of the dignity of the human person which all public authority is required to respect and protect (Article 1.1 of the Basic Law). The German people therefore professes the existence of *inviolable and inalienable human rights* as the basis of every community, of peace and of justice in the world. Article 1.2 of the Basic Law may be regarded as the source of an obligation on decision-makers in foreign policy matters to promote the protection of human rights throughout the world. However, this obligation is *very general in nature* and implies a very wide discretion in regard to the various situations. Lastly, in the light of Germany's obligation to protect human rights, *the Federation is under a duty to Germans to exercise diplomatic protection* to their advantage as against any States which might ill-treat them. It is true, however, that the competent organs have a wide discretion in this sphere as to how and when they afford this protection. Article 16 of the Basic Law provides that anyone persecuted on political grounds has the *right of asylum*, which is subject to various conditions and limitations set out in paragraphs 2 and 5 of that article.

The German State aims to promote peace (preamble to, and Article 26 of, the Basic Law). Article 26.1 of the Basic Law declares *unconstitutional any activities apt or intended to disturb peaceful international relations, especially preparations for military aggression*. This rule appears to be capable of binding foreign policy.

Article 23.1 of the Basic Law authorises the legislature, subject to certain conditions relating to a qualified majority, to transfer sovereign rights to the EU. Article 24.1 provides that sovereign powers may be transferred to international organisations. Under this article even the *Länder* may transfer sovereign powers falling within their competence to international organisations. With a view to maintaining peace the Federation may *become a party to a system of collective security* (Article 24 of the Basic Law). For the purpose of settling international disputes the Federation may accede to *agreements providing for general, comprehensive and obligatory international arbitration* (Article 24.3 of the Basic Law).[46]

The principles set out in international *treaties* are capable of determining the formulation of foreign policy, since the executive is bound by treaties. International law is directly integrated into domestic law and *takes priority* over ordinary legislation. It also has direct effect. If, and insofar as, an international treaty reflects norms of *customary international law* already binding the Federal Republic of Germany, those norms will override even subsequent federal legislation.

In the context of European integration, Article 23.1 of the Basic Law expressly requires those responsible for taking political decisions to observe and promote a number of constitutional values. Thus *Germany's participation in the EU is subject to observance in the EU of a number of values*. The Union must be bound by the principles of *democracy, the rule of law, social and federal principles as well as the principle of subsidiarity, and ensure protection of basic rights* comparable in substance with the level of protection afforded by the Basic Law. Consequently, German foreign policy which led to European integration was dependent on these factors.

On the other hand, Article 79.3 of the Basic Law places certain *absolute limits on the power to be integrated within the EU*. This provision prohibits amendments of the Basic Law affecting the division of the Federation

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[46] *The reason for this provision is not clear. Perhaps the drafters meant to encourage participation in inter-State cooperation of this type, or perhaps they considered that express authorisation to conclude such agreements was necessary because these agreements imply a transfer of the sovereignty of the country.*

into *Länder* and the participation of the *Länder* in the legislative process. Similarly, amendments of the principles laid down in Article 1, namely the inviolability of human dignity and respect of fundamental human rights by all public authority, and Article 20, namely the principles of social democracy, popular sovereignty and the rule of law, are prohibited.

- Control mechanisms
The only control mechanism in place is judicial review of foreign policy decisions by the administrative courts and/or by the Federal Constitutional Court. *If a foreign policy decision violates an individual's rights* he or she can *bring an action in the competent administrative court* (provided that the alleged action has violated the fundamental rights guaranteed by the Basic Law (Article 93.1 of the Basic Law)). However, the courts will take into account the *wide margin of appreciation* and discretion enjoyed by the competent organs. Thus, for example, while it is accepted that the Federation owes it to German nationals to exercise *diplomatic protection* in their favour as against any States which might ill-treat them, the courts recognise that the competent organs have a *wide margin of appreciation* as to how and when they afford this protection.

The Federal Constitutional Court, which may be required to settle disputes over the constitutionality of a foreign policy act, law or decision to conclude an agreement (Article 59.2 of the Basic Law) *has been reluctant to review the constitutionality of international treaties* or other foreign policy measures. It has never issued an injunction to stop a foreign policy move by the executive. Even as regards control of compliance with the rules of international law, the Constitutional Court has proved reluctant to act. The Court is inspired by the idea that it is of crucial importance that the FRG should appear at the international level with a single voice, naturally that of the executive. In the absence in the international legal order of organs competent to reach binding decisions on the compatibility of the positions adopted by States with their international obligations, what matters most is the opinion advocated by the State. Thus the courts must exercise great restraint in disapproving as illegal an international position adopted by a State. *A judicial intervention of this kind should not be able to occur unless the international legal position adopted by the State is arbitrary or irrational.*

14.2 Implementation

The role played by the separation of powers is as important in foreign policy as it is in domestic policy. The major share of power is given to the executive. At the same time, however, important rights of participation are given to the legislature, in particular as regards the conclusion of treaties (Article 59.2 of the Basic Law), EU matters (Article 23.2 of the Basic Law) and the deployment of German troops abroad.

- The legislature
International treaties which regulate the political relations of the Federation or which are connected with issues falling within the federal legislative power require the *approval* or participation of the Bundestag and the Bundesrat in the form of a federal law (Article 59.2 of the Basic Law). Despite the fact that the Bundestag is the only organ directly elected by the people, and that it therefore enjoys the highest level of democratic legitimacy, there is no general presumption that all important foreign policy decisions must be authorised by it. *Competence to take foreign policy decisions lies with the executive and the Bundestag plays a part only where the Basic Law expressly so provides.*

European integration has greatly influenced the division of powers, since the two legislative chambers, and especially the Bundesrat, are much more involved in determining the directions taken by European affairs than in other areas of foreign policy. According to Article 23.2 and .3 of the Basic Law, the Bundestag is to be constantly and closely integrated in the decision-making process. The Government is to give the Bundestag the opportunity to state its opinion before engaging in negotiations within the Council and must take account of the opinions of

the Bundestag in the negotiations. A committee has been set up to enable Parliament to exercise its powers under Article 23 of the Basic Law.

In addition to these express or implied powers which the Bundestag has to participate directly in the decision-making process, it also has the powers of *control* which every Parliament has in a democratic system. These include the *vote of no-confidence* (Article 67 of the Basic Law) and its *budgetary powers*.

- The executive

According to Article 59 of the Basic Law, the *President represents the Federation in its international relations*. He concludes treaties. His role is largely *ceremonial*, since the countersignature of the Chancellor or the competent Minister is required (Article 58 of the Basic Law). All foreign policy decisions are taken by the Government. The Prime Minister is responsible and determines the general guidelines of foreign policy (§ 1 of the Rules of Procedure). Within the framework of the guidelines set by the Chancellor, the Cabinet adopts the important foreign policy decisions. The Minister for Foreign Affairs is only responsible for the day-to-day business of foreign policy. Setting the course of foreign policy is a matter for the Chancellor and does not require parliamentary authorisation.

- The people

There is no provision for the direct participation of the people in the determination of foreign policy, either in the form of a referendum or that of popular initiative.

- Decentralised authorities

Under Article 32 of the Basic Law, *foreign relations are the domain of the Federation*. Where exercising its power to conclude treaties, however, the Federation must consult any federated State (*Land*) affected by a treaty project. On the other hand, *in areas where the Länder have the power to legislate, Article 32.3 provides that they may conclude international treaties*. This gave rise to a problem, since it was not clear was this power belonged exclusively to the *Länder* or whether it was concurrent with that of the Federation and whether the Federation had the power to enact legislation to implement the treaty. This dispute was resolved by an arrangement between the Federation and the *Länder*.[47] Consequently, constitutional customs creating a *modus vivendi* between institutions influenced the division of powers in foreign policy matters.

European integration has brought a more important role for the Länder and led to the amendment of the Basic Law and the insertion of a new Article 23. According to that provision (Article 23.4), in European Union matters the Bundesrat, which represents the *Länder*, *is to be involved in the decision-making process of the Federation* insofar as it would have to be involved in a corresponding internal measure or insofar as the *Länder* would be internally responsible.

According to Article 23.5 of the Basic Law, where in an area in which the Federation has exclusive legislative jurisdiction the interests of the *Länder* are affected, or where, in areas in which the Federation and the *Länder* have concurrent jurisdiction (Articles 72 and 74 of the Basic Law) or the Federation has sole jurisdiction (Articles 72 and 75 of the Basic Law), the Federation has the right to legislate, the *Federal Government is to take into account the opinion of the Bundesrat*. Where essentially the legislative powers of the *Länder*, the establishment of their authority or their administrative procedures are affected, the opinion of the Bundesrat is to *prevail* in the

[47] *This agreement was set out in the Lindau Agreement, which has not been officially published.*

decision-making process of the Federation. Pursuant to Article 52.3 of the Basic Law, the Bundesrat has established a *Chamber for European Affairs* with decision-making powers in matters concerning the EU.

It is also provided in Article 23.6 of the Basic Law that *where essentially the exclusive legislative jurisdiction of the* Länder is affected *the exercise of the rights of the FRG as a member of the EU are to be transferred by the Federation to a representative of the Länder* designated by the Bundesrat. However, these rights are to be exercised with the participation of and in agreement with the Federal Government. In this respect, too, *the Federation retains full responsibility* for the conduct of foreign policy as a whole.

The German members of the *Committee of the Regions*, which was set up by the Maastricht Treaty on a German initiative, are appointed by a complex procedure which involves the participation of not only the Federal Government, which proposes the candidates, and the *Länder*, which appoint them, but also the municipalities and counties, which must be given a say in the process (they appoint three of the twenty-four members of the Committee), although the *Länder* had initially attempted to monopolise the nomination process.

15. GREECE

15.1 Principles

- Identification
There is no provision which directly, expressly and exhaustively lists the foundations, principles and objectives of foreign policy. In domestic law, however (Constitution, legislation, regulations, decrees), provisions are sometimes found which refer expressly or by implication to that issue.

This is so, in particular, of Article 2.2 of the Constitution of 1975, which provides that "*Greece, in accordance with the generally recognised rules of international law, pursues the strengthening of peace and justice and the development of friendly relations between peoples and States*". Similarly, according to Article 108 of the Constitution, "the State safeguards the living conditions of the Greek diaspora and the maintenance of its links with the Mother Country". "*It also safeguards the education and social and occupational promotion of Greeks working outside the national territory*." Furthermore, Organic Law no. 419 of 1976 of the Ministry of Foreign Affairs, which sets out the powers of that Ministry, also refers to the *protection of the rights and interests of the Greek State and Greek individuals abroad* (Article 1.1 and 2).

Customary international law and international *treaties* approved by law and decisions of international organisations which are binding on Greece and immediately enforceable in or introduced into its domestic legal order form an integral part of domestic law and therefore constitute a source of law. They may therefore institute or define the objectives of foreign policy (one example is the Charter of the United Nations).

As a democratic country, Greece takes inspiration from a number of *values* in the exercise of its foreign policy. Thus Article 2.1 of the Constitution provides that "respect for and observance of human value constitute the primordial obligation of the Republic". Article 25 provides that human rights are guaranteed by the State and that "the recognition and protection by the Republic of fundamental and inalienable human rights are designed to achieve social progress and justice".

- Control mechanisms
There are no specific mechanisms to control respect for democratic values and human rights. In Greece all acts relating to the negotiation and conclusion of treaties are regarded as acts of State and are not amenable to judicial review.

15.2 Implementation

Foreign policy is conducted by the executive under the more or less passive control of the legislature. The courts' role is essentially confined to applying international law in domestic law.

- The legislature
External affairs come within the exclusive powers of the executive. Parliament may provide advice and express *wishes* in connection with the country's foreign policy but cannot make foreign policy itself. It is still able to control the Government in its foreign policy (Article 70.6 of the Constitution) and even to overrule it by a *motion of censure* (Article 84), but is *not entitled to force it to conclude a particular treaty, for example*.

However, according to the Constitution Parliament *plays a mandatory role in the procedure leading to the conclusion of treaties, in the case of certain categories*, which cover a very large number of agreements. Article 36.2 provides that "treaties on trade, those on taxation, economic cooperation or participation in international organisations or unions and those which include concessions which, according to other provisions of the

Convention, require legislation, or treaties which affect Greek citizens individually, shall take effect only after they have been approved by an express law". Parliament's participation in the treaty-concluding procedure does not mean participation in the act of ratification, accession, acceptance or approval of the treaty, but it constitutes an essential condition of the treaty's validity from the aspect of domestic law.

Parliament's approval, which must be given before the treaty is ratified by the Head of State or accepted by the Government, always takes the form of a law which has greater force than all other laws and has a three-fold function: (a) it authorises the executive to conclude the treaty; (b) it incorporates the treaty in the Greek order; and (c) it represents the legislature's order to the authorities and citizens to ensure that the treaty is implemented within the State.

Even after a treaty has been approved by Parliament, however, the President of the Republic or the Minister for Foreign Affairs may decide *not to ratify it or accept it*, where the interest of the country so requires, or to delay it. They may still *express reservations* when ratifying or accepting it, provided that these reservations are lawful in the eyes of international law; *and they may also denounce a treaty*, without requiring Parliament's approval, even where it was required in order for the treaty to be concluded.

- The executive

The *President* exercises all the powers expressly conferred on him by the Constitution. None the less, he *requires the Government's consent* in the form of the countersignature of the competent Minister. He *represents the State* at international level; he declares war and *concludes treaties* on peace, alliance, economic cooperation and participation in international organisations or unions (Article 36.1 of the Constitution). He has exclusive power to *ratify* any other treaty which, pursuant to international law, must be ratified in order to be validly concluded. He *issues credentials* to diplomatic missions sent abroad and *accepts* the credentials of foreign ambassadors. He also convenes the Council of heads of political parties represented in Parliament in order to consider important foreign policy issues of concern to Greece.

According to Article 82 of the Constitution. "*the Government determines and directs the general policy of the country* in accordance with the provisions of the Constitution and the law". This also applies to foreign policy. Consequently, all external powers, whatever they may be, belong to the Government, apart from those which the Constitution expressly confers on the President of the Republic.

As regards *treaties*, in particular, apart from those which are not referred to in Article 36.1 of the Constitution and those which, according to international law, do not require ratification or accession, the others are directly *concluded by the organs of the Government* by acceptance or approval, by exchange of letters or memoranda, or simply by signature.

The *Minister for Foreign Affairs* generally concludes all treaties which fall within the competence of the Government, without needing to produce full powers. It goes without saying that in the case of important treaties he acts on the instructions of the Cabinet or the Prime Minister. *In order to sign international agreements, other Ministers must have full powers issued by the President* of the Republic and in most cases by the Minister for Foreign Affairs. *The Council of Ministers is responsible for according international recognition to a foreign State*.

- The people

It is quite exceptional for the people to be involved in resolving foreign policy issues. However, the possibility exists in law. According to Article 44.2 of the Constitution of 1975, as amended in 1986, "the President of the Republic shall declare by decree a *referendum on grave national issues*, following a decision adopted by an absolute majority of the total number of Members of Parliament, on a proposal by the Council of Ministers".

16. HUNGARY

16.1 Principles

- Identification
The legal foundations of foreign policy are determined in the Constitution. According to Article 5 of the Constitution, "The State of the Republic of Hungary safeguards the freedom and power of the people, the *sovereignty* and *territorial integrity* of the country, and the boundaries registered in international treaties". According to Article 6, "The Republic of Hungary *repudiates war* as a means of dealing with conflicts between nations and refrains from the use of force against the independence or territorial integrity of other States". The Republic of Hungary considers that it is *responsible for the fate of Hungarians* living outside its borders.

According to Article 7 of the Constitution, the legal system of Hungary *accepts the universally recognised rules of international law* and ensures that the internal laws of the country are harmonised with the obligations assumed under international law. Article 8 states that Hungary recognises *fundamental rights*. Ensuring respect and protection for these rights is a primary obligation of the State.

Reciprocity and non-intervention in the domestic affairs of other States are fundamental principles. However, Hungary confers primary importance on the *protection of minorities* living in neighbouring countries. The violation of human rights cannot therefore be regarded as a matter internal to a country.

- Control mechanisms
Acting in their administrative capacity, the courts may annul individual administrative acts which infringe the rights of the person concerned. The *Constitutional Court* is responsible for overseeing the constitutionality of laws, regulations and other legal measures of the State services. In principle an international treaty which had been ratified by Parliament, inserted in and published as a law could be annulled by the Constitutional Court on the ground that it was unconstitutional. *In practice*, however, the Constitutional Court has declared on a number of occasions that it *has no jurisdiction* to review the constitutionality of laws relating to international treaties. The Constitutional Court has not yet taken a decision in this area.

16.2 Implementation

- The legislature
In Hungary *Parliament determines the fundamental principles of foreign policy*. It enacts the Constitution and concludes the international treaties that are of outstanding significance for external relations (Article 19.3 of the Constitution).

A *Standing Committee on Foreign Affairs* examines draft treaties before they are concluded by Parliament. Foreign policy may be debated in Parliament. Questions may be put to the Government. The Committee also often asks for reports from the Government on specific subjects.

- The executive
The *President* of the Republic is Head of State. According to Article 30 A of the Constitution, he represents the Hungarian State and *concludes international treaties*, but if the subject of the treaty falls within the competence of the legislature, the prior agreement of Parliament is required. The President *appoints and receives ambassadors* and plenipotentiary ministers. All measures adopted by the President require the *countersignature* of the Prime Minister or the competent Minister. The President's role is therefore largely symbolic.

The *Government* ensures the implementation of the laws and *concludes international treaties* (Article 35.1 of the

Constitution). It therefore ensures the *implementation* of the principles determined by Parliament in the exercise of international relations, while on the other hand it has autonomous powers in the conclusion of international treaties. Ministers may therefore conclude international treaties in their own special fields.

- The people

According to Law no. XVII of 1989 on referenda, all matters coming within the powers of Parliament may by the subject of a *referendum*, except where the law provides otherwise. In principle, questions relating to the directions to be taken by foreign policy may form the subject of a referendum. However, the *implementation of obligations undertaken in commitments governed by international law* and laws promulgating these treaties are *excluded* subjects. In practice Parliament has always refused to hold a referendum on the question of Hungary's accession to NATO, although an initiative requesting such a referendum was signed by more than 100,000 persons.

17. ITALY

17.1 Principles

- Identification

The legal foundations of foreign policy, as regards both its principles and essential aims and the organisation and functioning of the bodies responsible for implementing it, are laid down in the Constitution. Article 10 governs the relations between the Italian legal order and the generally recognised rules of international law, the legal position of aliens in Italy, the right of asylum and the prohibition of extradition for political crimes. These rules must be coordinated with Article 26 on the extradition of Italian citizens. According to Article 11, Italy *repudiates the use of war* to resolve international conflicts; on the other hand, *limitations of sovereignty are allowed for the purpose of establishing an order of peace and justice between nations*.

Democracy, the rule of law and the protection of human rights are not expressly mentioned as foreign policy objectives. However, they may be given effect by means of Article 11, since the repudiation of war by Italy is justified by its desire to contribute to the protection of the freedom of peoples. This point of view finds support in the fact that limitations of State sovereignty are permitted provided that they are capable of furthering peace and justice between nations.

The *generally recognised rules of international law* have *direct effect* in domestic law, pursuant to Article 10 of the Constitution. However, it must be remembered that the Italian legal order is dualist in the sense that other international rules do not have direct effect.[48]

Asylum must be granted to aliens who are not entitled to exercise in their own country the rights and freedoms protected in the Italian Constitution, while neither Italian citizens nor aliens can be extradited for political reasons.[49]

- Control mechanisms

Parliamentary control is considered to ensure respect for the principles which must be observed when foreign policy is defined. The *Constitutional Court also has a role in this area.* This is the case where Articles 10 and 11 are infringed or where a regional provision is not consistent with the obligation to comply with the international commitments of the State. Furthermore, according to the Constitutional Court, there is a violation of the Constitution where a normative act of the EU is not compatible with the basic principles of the constitutional order and with the provisions on fundamental rights and freedoms. But because the measures adopted by the EU cannot be reviewed by the Constitutional Court, this body will declare unconstitutional the laws on the basis of which the EU measures acquire direct legal effect in the Italian legal order.

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[48] *There is an exception to this rule, however, since pursuant to a consistent line of decisions of the Court of Justice of the European Communities Community norms have direct effect in all Member States of the Union.*

[49] *However, genocide is excluded from these provisions: see Articles 10 and 26 of the Constitution.*

17.2 Implementation

- The legislature

Parliament and the Government are responsible for elaborating the basic principles governing foreign policy. When the Government is invested *Parliament approves its general political programme*, which includes the chapters dedicated to foreign policy However, Parliament may intervene at any time in the making of foreign policy by *adopting ad hoc documents* or putting *questions* to the Cabinet. A debate may then take place and *directives may be given* to the Ministers.

Special regulations provide for draft EU legislation to be communicated to Parliament prior to being adopted, but actual cooperation between the Cabinet and Parliament depends on the political interests of the institutions concerned. *Parliament must authorise the ratification of the most important international treaties* (which are ratified by the Head of State) and is empowered to *decide on a state of war* (which must also be declared by the Head of State by a formal act). However, there are no rules which specifically require that Parliament is to authorise unilateral acts: denunciation of treaties, withdrawal of reservations, recognition of foreign States, etc.

Similarly, *there is no constitutional provision obliging the Cabinet to inform Parliament of, and obtain its approval for, the steps which it proposes to take in the future.* Although it is possible to gain the impression that this was what the drafters of the Constitution intended, it does not happen in practice.

- The executive

The Head of State is not competent to adopt the foreign policy of the State. The *President* is prohibited from playing an active part in the Government's foreign policy. However, he may participate in the implementation of foreign policy in bilateral meetings. In this case *he must comply with the directives* of the Government and Parliament. Moreover, he is generally accompanied by the Minister for Foreign Affairs. He *accepts the credentials of foreign diplomats and accredits Italian diplomats* in other countries. Lastly, he *ratifies*, on the basis of Parliament's authorisation, the international treaties negotiated by the Government where they are of a political nature, where they imply the establishment of international arbitrations and jurisdictions or where they require territorial changes.

Within the Government there are *three Ministers* who are competent in treaty matters: the Minister for Foreign Affairs, the Minister for External Trade and the Minister for European Affairs. The Prime Minister may also intervene, especially where important issues need to be resolved. The *Prime Minister represents* Italy in international conferences. The Cabinet *approves the directives* to be followed in the sphere of international relations and that of the EU and also the *drafts of international treaties* which have military or political relevance. The Minister for Foreign Affairs has a certain discretion in implementing the decisions of the Cabinet and is responsible for negotiating international treaties, even where they fall within the competence of other Ministers.

- The people

A *referendum* was held in 1989. It concerned the adoption of a directive on the establishment of a European Government and the entrusting of the European Parliament with the drafting of a European Constitution. The text was approved by a large majority and the result of the referendum was regarded as the basis for Italy's adhesion to the new steps in European integration. However, a popular referendum *abrogating decisions of Parliament authorising the ratification* of international treaties is *not permitted*. The Constitutional Court concluded that this meant that decisions of Parliament aimed at *implementing* international commitments in the domestic legal order could not be abrogated by referendum.

- Decentralised authorities

In Italy only the State has the power to conclude treaties. However, the regions are authorised to establish

promotional *contacts* with the authorities of other States at the same territorial level and to exchange views on matters of common interest. They may also maintain direct relations with the authorities of the EU. The importance of transfrontier cooperation is thus increasing.

18. KYRGYZSTAN

18.1 Principles

- Identification

The essential principles of foreign policy are set out in the Constitution. The preamble thereto states that the Republic, as a free and democratic community, is attached to the general moral principles existing among the peoples of the world. Article 9.4 of the Constitution states that the Republic of Kyrgyzstan aspires to *a fair world, mutually advantageous cooperation among the peoples, the peaceful resolution of world or regional problems and observance of the conventional principles of international law*. Consequently, acts which affect the peaceful cohabitation of peoples, and the propagation and instigation of international conflicts are prohibited. Treaties which have been ratified form part of domestic law. Article 15 proclaims human dignity as an absolute right.

- Control mechanisms

The Constitutional Court declares unconstitutional legislative acts which infringe the Constitution.

18.2 Implementation

- The legislature

In accordance with the Constitution (Article 58), Parliament determines the major directions of the policy of the country. *It ratifies and denounces treaties*. It also decides on a state of war or peace and the use of the armed forces.

- The executive

The President is responsible for implementing foreign policy and assigns special tasks to the Prime Minister. According to Article 42 of the Constitution, *the President represents the State* in international relations. Pursuant to Article 46, he may *enter into negotiations, sign bilateral treaties* and submit them for consideration by Parliament. According to Article 20.1, Chapter II of the Law on *the Government*, the Government may elaborate and *submit for consideration by Parliament the principles applicable in foreign policy*. It is also responsible for adopting implementing measures, ensuring compliance with treaties ratified by Parliament, reaching decisions on the conclusion of bilateral treaties and renewing or denouncing them. According to Article 21 of that Law, the Prime Minister is entitled to submit proposals for the formulation of foreign policy to the President and the Government. He may also represent the country in international meetings and sign bilateral agreements.

19. LATVIA

19.1 Principles

The essential principles of the foreign policy of the Republic of Latvia are: (a) integration in the structures of Europe; (b) increased cooperation between the Baltic States; (c) bilateral relations within the framework of regional cooperation; and (d) a more active role in international economic and financial organisations.

19.2 Implementation

- The legislature
The essential principles of foreign policy are elaborated by Parliament, which ratifies multilateral treaties. All treaties affecting matters which must be the subject of legislation must be ratified by Parliament.

- The executive
The President represents the State in its international relations. *He accredits Latvia's representatives* abroad and *receives the credentials* of foreign representatives. *He implements the decisions* of Parliament concerning the ratification of treaties.

- The people
According to Article 73 of the Constitution, *treaties are not to be submitted to a referendum*.

20. LIECHTENSTEIN

20.1 Principles

- Identification
International law automatically forms part of domestic law. In its foreign policy the State is legally *bound by the Charter of the United Nations and other international instruments which have been ratified* (for example, the decisions of the International Court of Justice are recognised as binding). Furthermore, the State is required to comply with the binding decisions adopted by international organisations to which it belongs (for example, the binding decisions of the United Nations Security Council). Finally, it is under a political duty to comply with the principles of the Helsinki Final Act of the CSCE, which govern the mutual relations of the participating States.

- Control mechanisms
There is an *ex post facto* control of the compatibility of legal rules with treaties.

20.2 Implementation

- The legislature
Parliament's influence has grown during the last twenty years. There is a *Standing Parliamentary Committee* on foreign affairs. Article 8.2 of the Constitution provides that *treaties* ceding the territory or disposing of the property of the State, treaties concerning the rights of sovereignty or regal rights and those imposing a fresh burden on the Principality or its citizens may only be concluded *after the Diet has given its assent*. *Treaties may not be denounced* without at least the tacit consent of Parliament.

- The executive
In international relations *the Prince represents the State*, subject to the necessary assistance of the responsible Government. The Prince enjoys the right to *ratify* treaties, although the signature of the Government is required in each case.

- The people
Every international treaty which requires the approval of Parliament is submitted to a facultative *referendum*. Every treaty approved by Parliament is submitted to a referendum, either by a decision of Parliament on upon application by 1,500 electors.

21. LITHUANIA

21.1 Principles

The legal foundations of foreign policy are the Constitution, other laws enacted by Parliament, the Government's programme of activity, the Government's directives and the decisions and conclusions of the Constitutional Court.

Chapter 13 of the Constitution deals specifically with foreign policy. According to Article 135, *in conducting its foreign policy Lithuania* is to promote the universally recognised principles and norms of international law. It must strive to safeguard *national security and independence and the basic rights, freedoms and welfare* of its citizens; it must take part in the *creation of a sound international order based on law and justice*. War propaganda is thus prohibited. Article 137 provides that weapons of mass destruction and foreign military bases are not to be stationed on the territory of Lithuania.

Values such as democracy, human rights etc. have both a direct and an *indirect influence* on the country's foreign policy. The direct influence is the result of Article 135 of the Constitution, while the indirect influence is the result of the fact that these values are regarded as the highest goals of the State and society. The Constitution and laws have provided appropriate means and legal guarantees for the achievement of these goals.

According to Article 136, the Republic of Lithuania is to *participate in international organisations* provided that they do not contradict the interests and independence of the State. *Treaties* may be regarded as the legal foundation of the conduct of foreign policy and the establishment of its principles and aims, provided that they have been ratified by Parliament. Since the principal aim of Lithuania's foreign policy is the country's integration in the alliances of Western Europe, its foreign policy is largely influenced by these alliances.

Significant among the constitutional laws is the Constitutional Act of 8 June 1992 on the Non-alignment of the Republic of Lithuania with Post-Soviet Eastern Alliances. Ordinary legislation includes the Law on International Treaties of the Republic. Parliament has sometimes adopted resolutions on current issues of foreign policy: it has condemned acts of aggression or terrorism, recognised new States, approved or disapproved special political acts of the Government.

- Control mechanisms
Judicial review is available only in respect of international treaties. Upon a decision of the Constitutional Court to the effect that an international treaty is or is not compatible with the Constitution, *Parliament decides* whether or not to ratify it.

21.2 Implementation

- The legislature
According to Article 138, Parliament *ratifies or denounces treaties which concern*:
(a) realignment of the country's borders;
(b) political cooperation with foreign countries, mutual assistance or national defence;
(c) the renunciation of the use or threat of force, and peace treaties;
(d) the stationing and status of the armed forces of the Republic on the territory of a foreign State;
(e) the participation of the Republic in international organisations;
(f) multilateral agreements or long-term economic agreements;

Parliament has sometimes adopted *resolutions* concerning current issues of foreign policy, such as, for example, resolutions condemning acts of aggression or terrorism, recognising new States or approving or disapproving

specific political acts of the Government. According to Article 67.17 of the Constitution, Parliament may consider other foreign policy issues.

The Government's programme plays an essential role in the conduct of foreign policy. The Government has the right to adopt directives and other regulations to implement laws. *Parliament examines the Government's general programme of activities in order to decide whether to approve it*.

- The executive

The *President* of the Republic probably has the greatest power in the sphere of foreign policy. According to Article 84 of the Constitution, the President:
(a) settles foreign policy issues and, together with the Government, implements foreign policy;
(b) *signs treaties* and submits them to Parliament for ratification;
(c) *appoints or recalls*, upon the recommendation of the Government, the country's representatives in foreign States and in international organisations;
(d) makes *annual reports* to Parliament on the situation in Lithuania and domestic and foreign policy.

The Government submits its programme to Parliament; this includes a chapter on foreign policy. The Government cannot act until its programme has been approved (Article 92 of the Constitution). The Government is responsible to Parliament for its actions.

- The people

According to Article 9.1 of the Constitution, "*the most significant issues concerning the life of the State and the People shall be decided by referendum*". This also applies to the most significant issues of foreign policy. Such referenda have actually been held. Moreover, Article 68.2 of the Constitution makes provision for popular initiative.

22. MALTA

22.1 Principles

- Identification

Articles 1 and 2 of the Constitution proclaim Malta's attachment to the principles of democracy and fundamental rights. Article 1.3 provides that Malta is a neutral State actively pursuing *peace, security and social progress among all nations by adhering to a policy of non-alignment and refusing to participate in any military alliance*. This means, in particular, that:

(a) no foreign military base is permitted to be stationed on Maltese territory;

(b) no military activity is authorised in Malta, except at the request of the Government, in the exercise of the inherent right of self-defence, in the event of any armed violation of the national territory, or in pursuance of measures or actions decided by the Security Council of the United Nations, or where there is a threat to the sovereignty, independence, neutrality or territorial integrity of the country;

(c) apart from in the above circumstances, no other military activity may take place in Malta where it will entail the presence of a concentration of foreign forces;

(d) apart from in the above circumstances, no foreign military personnel are allowed on Maltese territory, other than military personnel taking part in civil activities (an exception is also made for a reasonable number of military technical personnel assisting in the defence of the country);

(e) the shipyards of the country are to be used for civil and commercial purposes, but may also be used, within reasonable limits, for the repair and construction of military vessels. In accordance with the principle of non-alignment, Maltese shipyards are not made available to the military vessels of the two superpowers.

A treaty which imposes duties or confers rights on individuals is not a source of domestic law unless it is given legislative effect (section 11 of the Maltese Independence Order 1964). In order to form part of domestic law, therefore, every treaty must be incorporated. Once incorporated in domestic law, a treaty may contain principles which must be observed when foreign policy is defined.

- Control mechanisms

Judicial review of compliance with the principles laid down by law and the Constitution is possible (before the First Hall of the Civil Court and then before the *Constitutional Court*). Administrative actions are subject to judicial review. The administration must act on the basis of a pre-existing rule of law and must justify its action as authorised by law, otherwise its action will be *ultra vires*.

22.2 Implementation

- The legislature

Parliament's role is centred round the ratification and adoption of international treaties in domestic laws. The Ratification of Treaties Act (Act V of 1983) stipulates the treaties which cannot enter into force without being ratified by Parliament. These are treaties which affect the status of Malta under international law, the security of Malta, its sovereignty, independence, unity or territorial integrity (section 3(1)(a) and (b) and (2)) and those concerning the relationship of Malta with any multinational organisation (section 3(1)(c) and (2)). A Resolution to the effect that such a treaty is to come into force must be passed by Parliament.

As regards the *denunciation of treaties*, moreover, Article 4 of the Ratification of Treaties Act provides that where the country ceases to be a party to a treaty (as provided for in Section 3(1)(a), (b) or (c)), *the Minister responsible for foreign affairs is to inform the House of the fact, giving the reasons therefor*.

There is also an *indirect control* of Parliament in relation to the conduct of foreign policy; this is effected by

parliamentary debates, promoted by the parliamentary committee responsible for foreign affairs. Questions may also be put to Ministers and information on foreign policy may be obtained in this way.

- The executive

The *President* is not directly involved in the formulation of foreign policy, but the Prime Minister must keep him informed of the general conduct of the Government's policy. *The Government determines the principles of Malta's foreign policy*.

- The people

In determining the principles applicable in foreign polity, the executive has discretion as to whether to hold a *referendum*. Under the Referenda Act (Chapter 237 of the Laws of Malta) *the electorate may demand a referendum*.

23. MOLDOVA

23.1 Principles

- Identification
Principles and objectives of foreign policy can be found in divers sources of domestic law. First of all the Constitution foresees in it's preamble it's attachment to universal values, such as the rule of law, civil peace, democracy, human rights, justice and political pluralism. Article 4 (2) of the Constitution foresees that "in case of conflict between international rules binding the Republic in the field of human rights and domestic law, it is always the first ones who prime". Article 8 of the Constitution also foresees that "the Republic of Moldova has the obligation to respect the UN Charter and the treaties it has signed, and found it's relations with other countries on general accepted principles of international law". Finally article 11 of the Constitution declares Moldova's permanent neutrality. The Republic of Moldova does not admit military troops of other countries in it's territory;

Furthermore, the Parliament of the Republic of Moldova has approved on the 8 February 1995 the "Concept of foreign policy", which contains following principles: the principle of abstention from the use of force or threat of force, the exclusion of war except of cases foreseen by law, the principle of pacific settlement of international disputes, State's sovereignty, international cooperation, States equality and territorial integrity, and the principle of international protection of human rights. The county's priorities in the field of human rights are the following: the strengthening of the independence and sovereignty of the State, the guarantee of it's territorial integrity, the promotion of social and economic reforms necessary to people's well fare and the harmonization of domestic law with international standards.

- Control mechanisms
The Constitutional Court controls the constitutionality of laws, regulations and decisions of the Parliament, of the presidential decrees, the decisions of the Government and the international treaties to which the Republic of Moldova is party, when they are submitted to it's control. There has not been any case-law in this matter by now.

23.2 Implementation

- The legislature
The Parliament ratifies the treaties and international agreements and approves the "Concept of foreign policy" of the country which contains the directive principles of foreign policy. It also exercises a control over the implementation of foreign policy. Debates are regularly held on this subject. Twice a year there is a report on the implementation of foreign policy presented to Parliament. If needed, the Parliament can ask the Minister of Foreign Affairs to present explanations concerning specific questions. Furthermore it is the Parliament who approves the budget of the Ministry of Foreign Affairs.

The foreign policy committee of the Parliament is responsible for the inter-parliamentary relations. It points out the representatives of the Parliament to the other international parliamentary organisms. It approves the candidatures of the Ambassadors on proposition of the President of the Republic. It follows through the implementation of the "Concept of foreign policy", and, if needed, it's elaboration. It presents to the Parliament all projects of treaties of a political, legal, social or economic nature and joins to them a detailed report.

- The executive
According to article 77 of the Constitution, the President of the Republic represents the State abroad and is the guarantor of the national independence, unity and territorial integrity of the country. He enters into discussions, he participates into negotiations, he concludes international treaties in the name of the Republic of Moldova (article 2 of the Law concerning the conclusion, the implementation, the ratification and the denunciation of treaties,

conventions and international agreements), and submits them to the Parliament for ratification, in a delay established by law. The President of the Republic accredits and recalls the country's diplomatic representatives on Government's proposition. He receives the credentials and the letters recalling the representatives of other States in the Republic of Moldova. The ratification of treaties and their denunciation require the signature of the President of the Republic and the countersignature of the Minister of Foreign Affairs.

The Government adopts a plan of action in the field of foreign policy according to the principles adopted by the Parliament in this field.

- The people

The possibility of consulting people by referendum is regulated by the Constitution and the Law on referendum n°1040 - XII of 26 May 1992. Therefore, according to article 66 (b), one of the fundamental attributions of the Parliament is the declaration of a referendum. According to article 75 the most important problems of the State and the society are submitted to a referendum. Finally article 88 foresees that the President of the Republic can ask people to express by referendum their will on matters of national interest. The provisions adopted by referendum have a supreme legal force and are necessarily applied on the territory of the Republic.The question of Moldova's accession to a political organisation of States or it's withdrawal from such an organisation are exclusively settled by referendum.

24. THE NETHERLANDS

24.1 Principles

- Identification
According to Article 90 of the Constitution, "the Government shall promote the development of the *international rule of law*". This provision shows the major importance which Parliament and the Government ascribe to an international order based on universally applicable legal rules.

Article 91 deals with the conclusion of treaties; Article 92 provides that *powers may be transferred to international organisations*; and Articles 96, 98 and 100 provide for the defence of the realm, *maintenance of peace* and declaration of war.

Both written and unwritten law form part of the domestic legal order. Treaties take precedence over ordinary legislation. The principles contained in treaties must therefore be observed when the foreign policy of the country is determined. *Values such as democracy and human rights are provided for in treaties* to which the Netherlands is a party. Consequently, they are binding on the Government even in the context of foreign policy.

- Control mechanisms
With the exception of parliamentary control, there is no specific control of respect for values such as democracy and human rights in foreign policy. Article 120 of the Constitution provides that the constitutionality of treaties is not to be reviewed by the courts.

24.2 Implementation

- The legislature
Treaties must be approved by Parliament (Article 91). *The same applies to the denunciation of treaties and the withdrawal of reservations, but parliamentary approval is not required for unilateral acts such as the recognition of States or Governments*. However, Parliament's consent need not necessarily be given by a formal act; *a treaty may be given tacit approval*. There are parliamentary committees in this area, but their responsibilities do not exceed those of Parliament.

On the other hand, the Government is politically answerable to Parliament, which means that Parliament exercises a certain control over foreign policy. Frequently, therefore, there are exchanges of opinions which enable the Government to take account of Parliament's ideas, requests and objections. However, *the question of parliamentary authorisation of directives on issues of foreign policy does not arise*. Once a year, when the budget is debated, foreign policy comes up for discussion.

- The executive
According to Article 90, "the Government shall promote the development of the international rule of law". *The Government is therefore responsible for international relations*. A major exception is the requirement for parliamentary approval, which also applies to the denunciation of treaties and the withdrawal of reservations, but this intervention by Parliament does not apply in the case of unilateral actions such as recognition of States or Governments.

Traditionally, the Minister for Foreign Affairs was responsible for elaborating the foreign policy of the country. However, growing inter-State cooperation has tended to blur the distinction between domestic and external policy. Ministers responsible for particular branches of domestic affairs aspire to taking over the external aspect of their responsibilities. Furthermore, the Prime Minister's role in foreign policy has also increased in importance since he

sits on the European Council, where the major decisions on foreign policy are taken.

- The people
There is no provision for referenda or popular initiatives on foreign policy issues.

25. NORWAY

25.1 Principles

- Identification
In Norway, which has the oldest valid Constitution in Europe, there are very few written norms which guide foreign policy. This area is principally covered by *customary law at constitutional level* and also by norms of a quasi-legal or political nature. The Foreign Service Act sets out the rights and obligations of the various individuals and bodies concerned. The legal norms do not contain any definition of the principles and aims of foreign policy. There is no provision specifically requiring respect for values such as *democracy, the rule of law or individual rights and freedoms* in the conduct of foreign policy.

- Control mechanisms
Judicial review is available only where *there has been a violation of an individual's rights*.

25.2 Implementation

- The legislature
Although the conduct of foreign policy is traditionally a prerogative of the King, Parliament has powers to control the executive. Pursuant to Article 26 of the Constitution, *Parliament is to consent to the ratification of a treaty, in three circumstances*: where the treaty requires new domestic legislation, where it requires budgetary action or where it is of importance from a legal and political point of view. The same applies where the State is to enter into an international commitment. On the other hand, *Parliament's consent is not required where the Government wishes to withdraw from a treaty*. In practice, therefore, the Government should always consult Parliament before adopting important foreign policy decisions. Consultations of this type may take place within *committees*, in this case within the Foreign Relations Committee.

- The executive
The King is only the formal Head of State. The Government is actually responsible for the conduct of foreign policy.

- The people
Referenda and popular initiatives do not ordinarily form part of the system. *As an extraordinary measure*, however, Parliament has decided to hold a referendum. It has done twice so in respect of Norway's accession to the European Union.

26. POLAND

26.1 Principles

- Identification
The Constitution contains only very general provisions relating to the legal foundations of foreign policy. Treaties, which are regarded as a source of domestic law, establish the aims of foreign policy. Human rights and fundamental freedoms, democracy and the rule of law are regarded as principles which apply to both domestic and external law. In the light of Poland's desire to be integrated in the structures of Western Europe, the principles of these organisations have great influence on the formulation of its foreign policy.

- Control mechanisms
Article 188 of the Constitution provides for the Constitutional Court, which is responsible, *inter alia*, for controlling the conformity of laws and treaties to the Constitution. Article 79 of the Constitution gives everyone whose constitutional rights or freedoms have been infringed the right to appeal to the Constitutional Court for its judgment on the constitutionality of a law or other normative act upon which a court or organ of public administration based its final decision with regard to the individual's rights, freedoms or obligations specified in the Constitution.

26.2 Implementation

- The legislature
Each year the Parliament discusses the essential principles of foreign policy. A report is presented by the Minister for Foreign Affairs for adoption by Parliament. Specific reports may also be requested. Article 89 of the Constitution sets out the categories of treaties which require legislation before they can be ratified or denounced. These are treaties relating to State borders, defensive alliances and treaties which impose financial burdens on the State or matters regulated by statute or those which the Constitution requires to be in the form of statutory law. Article 87 of the Constitution defines sources of universally binding law in Poland, which are the Constitution, statutory law, ratified international agreements, and regulations. Article 90 introduces a new principle, allowing Poland, by virtue of international agreements, to delegate to an international organisation or institution the powers of organs of State authority in relation to certain matters.

- The executive
According to Article 146 of the Constitution, the Council of Ministers is responsible for the conduct of Poland's foreign policy. According to Article 133 of the Constitution, the President is the supreme representative of the country in its international relations. Under Article 133 the President also has a general supervisory power in the field of foreign policy. This power is inconsistent with the power conferred by Article 142 on the Minister for Foreign Affairs to administer relations with other States and with Polish representatives in other countries. The President ratifies and denounces international treaties and/or notifies Parliament and the Senate thereof, if prior legislation is not required.

- The people
In matters which are most important for the State, a referendum may be held. Such important matters may, of course, also relate to foreign policy.

27. PORTUGAL

27.1 Principles

- Identification

The Constitution lays down the legal principles of foreign policy. *Article 7.1 of the Constitution of 1976 sets out the general principles which govern foreign policy*. They are consistent with those provided for in the first two articles of the Charter of the United Nations. Paragraphs 2 and 3 of Article 7 define the principal axes of the activity to be employed by the organs responsible for the *ius tractuum*. Paragraph 4 *accords a special place to relations with Portuguese-speaking countries*. Paragraphs 5 and 6 are the *result of European integration*. They were inserted in the Constitution to meet the problems of sovereignty raised by the Maastricht Treaty.

Other provisions concern the country's foreign policy. These include Article 15, which concerns the rights and duties of aliens, stateless persons, citizens of the European Union and citizens of Portuguese-speaking countries. Article 33.5 concerns extradition, *deportation and the right of asylum*. Article 78.2.d concerns cultural relations. Article 163 f deals with *Parliament's participation in the construction of Europe* and Article 197.1.i with the duty to notify Parliament in European matters. Lastly, Article 9 concerns the State's duty to ensure national independence and to promote the conditions necessary to that end.

The principles and rules of general or ordinary international law form an integral part of Portuguese law (Article 8.1). The rules of conventions which have been duly ratified or approved and published in the Official Journal are applicable in the Portuguese legal order insofar as they impose international obligations on the country (Article 8,2). All legal rules adopted by international organisations enter directly into force in the domestic legal order where the relevant treaties so provide (Article 8.3).

Treaties of major importance, such as the Maastricht Treaty, which led to a revision of the Constitution in 1992, influence the formation of foreign policy.

- Control mechanisms

All courts have jurisdiction to *appreciate constitutionality* (Article 204). The court of last instance is the Constitutional Court (Articles 210.1 and 212.1). There have been a number of cases where the courts have been required to examine the constitutionality of treaties, conventions and agreements, since according to the Constitution international conventions occupy a place below the Constitution but above legislation.

27.2 Implementation

- The legislature

Parliament approves conventions relating to matters which fall within its exclusive competence (Articles 164 and 165); treaties concerning Portugal's participation in international alliances, or treaties of friendship, peace or defence, treaties on the adjustment of Portugal's borders, those dealing with military affairs or matters and all those which the Government has submitted for approval by Parliament. A treaty which has not been approved cannot be ratified (Article 135 b). Prior approval is therefore required only for conventions and for certain treaties whose subject-matter is international (Article 1641 i), or to declare war or peace (Article 164.n) - except in the case of actual or imminent aggression (Article 135 c).

- The executive

The *President of the Republic*, as Head of State, *represents* the country abroad. He guarantees national independence and the unity of the State (Article 120 of the Constitution). On a proposal from the Government, he *appoints* ambassadors and special envoys; he *accepts the credentials* of foreign diplomatic representatives, he *ratifies international treaties* once they have been approved, he *declares war* in the case of actual or imminent aggression and *makes peace* (Article 135) and, lastly, he may use his *power of veto against an application for ratification* of a treaty (Article 278.1) and refer treaties and international agreements or conventions to the Constitutional Court for a review of their legitimacy.

The *Government approves treaties* which do not fall within the competence of Parliament (Article 197.1.c) and *proposes* that the President should declare war or peace (Article 200.1.g). Any act of the President must be *countersigned* by the Government, otherwise it does not exist in law (Article 140). The Minister for Foreign Affairs, in agreement with the Government, is responsible for formulating, coordinating and implementing foreign policy.

- The people

Issues of great national interest which are to be the subject of legislation or an international convention may be submitted to a *referendum* (Article 115.3).

- Decentralised authorities

Article 197 of the Constitution provides that the Government is to be responsible for the conduct of foreign policy. The *Autonomous Regions* (Madeira and the Azores) are required to *participate in the negotiation* of agreements (Article 227.1.t). They are also free to establish *relations of cooperation* with foreign regional entities, provided that they adhere to the directions laid down by the organs of sovereignty (Article 229.1.u).

28. ROMANIA

28.1 Principles

- Identification
The Constitution states in Title I, "General Principles", that the Republic is to enter into and develop *peaceful relations* with all States (Article 10). The Constitution reproduces the content of the Declaration of the General Assembly of the United Nations Organisation of 24 October 1970 on the principles of international law concerning friendly relations and cooperation between States, in which the States are requested to *abstain from the use of force* or the threat of force and to observe the right to sovereign equality.

The second principle relating to foreign policy to which Article 10 of the Constitution makes express reference is the development of *good neighbour* relations, which is tending to become a generally recognised principle in international affairs and which is often found in UN resolutions.

The third principle of foreign policy set out in Article 10 of the Constitution is the State's firm undertaking to observe the principles and other *generally accepted rules of international law*. By forming part of the *jus cogens* the fundamental principles of international law are mandatory and must be observed as such. This follows from Article 103 of the Charter of the United Nations. Although the majority of mandatory rules of international law form part of the content of its general principles, Article 10 of the Constitution makes separate reference to respect for the other generally accepted rules of international law.

Treaties ratified by Parliament form part of domestic law. According to Title I of the Constitution, the Romanian State undertakes to meet its international treaty obligations strictly and in good faith. This gives expression to one of the oldest principles of international relations, "*pacta servanda sunt*". Treaties have the legal force of the law whereby they are ratified. Article 20 provides that in the event of conflict between treaties relating to fundamental rights and domestic legislation the international provisions are to prevail.

In practice, Romania's aim to be integrated in Western European structures and alliances influences the formation of its foreign policy. A number of articles of the Constitution establish the values of *democracy, the rule of law and human rights*. Romania is also a party to a number of treaties and international conventions which implement these principles.

- Control mechanisms
Compliance with the democratic values incorporated in the rules of domestic or international law is controlled by the domestic courts and by the *Constitutional Court*, and also by the protection mechanisms established by the conventions on the protection of human rights to which Romania is a party. *Treaties must be compatible with the Constitution*. Therefore they may either be ratified without reservation or lead to an amendment of the Constitution. The constitutionality of a treaty may be reviewed before the relevant law is promulgated. Even after promulgation of the law an objection of unconstitutionality may be raised before the courts (Article 144.a and c of the Constitution). A further, and this time *political, control* is exercised by *Parliament*.

28.2 Implementation

- The legislature
Parliament approves the Government's foreign policy when it accepts its general programme and also when it approves the reports or general declarations subsequently presented by the Prime Minister. It may *withdraw its confidence* in the Government at any time by adopting a motion of censure (Article 111 of the Constitution). It may put *questions* to Ministers and put questions to the Government or any member of the Government on

important aspects of foreign policy. The Government is required to produce the documents and information requested by Members of Parliament. Parliament may influence the definition of foreign policy, especially during the debates and vote on the Government's programme when it is submitted to Parliament. Parliament *ratifies treaties and may also denounce them*. It adopts declarations, messages and appeals on issues of foreign policy.

- The executive

The central role in the definition of foreign policy is played by the *President*. He *represents* the Romanian State and guarantees the national independence, unity and territorial integrity of the country (Article 80.1 of the Constitution). He may consult the Government on important or urgent problems. He may participate in meetings of the Government when problems of national interest relating to foreign policy are discussed; he presides over these meetings (Articles 86 and 87 of the Constitution). However, *the Government's opinion is advisory*. The President sends Parliament messages concerning the principal political problems of the nation (Article 88 of the Constitution), which to a large extent concern foreign policy. The President *concludes* on behalf of the Republic of Romania the *treaties* previously negotiated by the Government and subsequently submitted to Parliament for ratification. He *accredits and recalls* Romania's diplomatic representatives on a proposal from the Government and approves the creation and abolition of diplomatic missions and changes within their ranks. *The representatives of foreign countries are accredited to* the President (Article 91 of the Constitution).

The *Government's* role is to *implement* the Romania's foreign policy in accordance with the Government programme accepted by Parliament. This role is carried out both by its concrete executive action and by its normative activity of proposing the laws which ratify treaties. *Once accepted by Parliament, the Government's programme becomes binding* on the Government. The same applies to the reports or declarations of general policy presented to Parliament by the Prime Minister, which supplement or amend the initial programme. The Government is answerable politically to Parliament. The Minister for Foreign Affairs is responsible for carrying out the country's foreign policy in accordance with the law and the Government's programme. He also represents the country in international relations, alongside the President and the Prime Minister.

- The people

The President, after consulting Parliament, may ask the people to express by *referendum* their views on problems of international interest, including foreign policy matters (Article 90). On the other hand, there is no provision for a right of popular legislative initiative.

29. RUSSIA

29.1 Principles

- Identification
In the preamble to the Constitution the people of Russia proclaims its attachment to human rights, the universally recognised principles of equality of law and the *self-determination of peoples*, the intangibility of democracy and the *sovereignty* of Russia. The Russian people recognises that it forms part of the international community.

While proclaiming the sovereignty of Russia, Article 79 provides that Russia may be a party to inter-State unions and *transfer part of its powers to them*, in accordance with the corresponding treaties, where this does not entail a limitation of human and civic rights and freedoms and where it is not contrary to the foundations of the constitutional order of the Federation.

Values such as democracy, human rights and fundamental freedoms are among the foundations of the constitutional system of the Federation of Russia, which no provision of the Constitution can infringe (Article 16), still less the other State powers, including in the sphere of foreign policy.

According to Article 15.4 of the Constitution, the universally recognised principles and rules of international law, and also treaties, form an integral part of domestic law. Moreover, international *treaties take precedence* over domestic law. There are no constitutional laws which determine the aims and principles of foreign policy: these are defined in ordinary laws. Consequently, the principles established by treaties must be observed when the foreign policy of the country is defined.

- Control mechanisms
As guarantor of the Constitution, the *President* may repeal acts of the Government, which, according to the Constitution, is to adopt measures to implement Russia's foreign policy (Articles 80, 114 and 115).

The *Constitutional Court* of the Federation rules on the conformity with the Constitution of the various domestic measures (federal laws, acts of the President, the Council of the Federation, the Duma and the Government of the Federation), including those concerned with foreign policy. It also rules on the conformity with the Constitution of treaties which are not yet in force. A treaty which is declared contrary to the Constitution cannot enter into force (Article 91 of the Law on the Federal Constitutional Court).

29.2 Implementation[50]

- Vertical division of powers
According to the Constitution of the Federation (Article 71), *foreign policy and international relations, treaties, the problems of war and peace, external economic relations etc. come within the competence of the Federation of Russia*. The coordination of economic relations comes within the joint competence of the Federation and its subjects (Article 72 of the Constitution and Law of 18 March 1992). *The Republics are autonomous participants in international and external economic relations*, provided that this is not contrary to the Constitution, the laws of the Federation and the Federal Treaty. International relations within the Federation (and also within the territories

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[50] *In view of the federal nature of the Russian State and the particular problems associated therewith, it was decided to deal with the relative responsibilities of the various bodies with a foreign policy role by analysing, first, the place of the federated States in this sphere (vertical division of powers) and, secondly, the respective roles of the legislature, the executive and the people (horizontal division of powers).*

and the regions) is coordinated by the federal organs of the State power of the Federation with the Republics.

One example which may be given is the Treaty between the Federation of Russia and the Republic of Tartarstan "on the delimitation of spheres of competence and the delegation of powers between the organs of the State power of the Federation of Russia and those of the Republic of Tartarstan" of 15 February 1994. The treaty provides that the *organs of the Republic are to exercise State powers, including participation in international relations*, that they are to establish relations with foreign States and *conclude with these States agreements* which are not contrary to the Constitution and the undertakings of the Federation or to those of the Republic, that they are to participate in the activity of the corresponding international organisations and pursue an autonomous external economic policy. Lastly, joint coordination is envisaged for international and external economic relations.

On the other hand, Article 4 of the law on international treaties of the Federation of Russia provides that the treaties of the Federation which concern questions which fall within the competence of its subjects are to be *concluded by agreement with the competent organs of the subjects concerned*.

The subjects of the Federation of Russia may submit for consideration by the President of the Federation or the Government *recommendations on the conclusion or denunciation and the cessation of international treaties* (Articles 8 and 35 of the Law on International Treaties of the Federation of Russia). Similarly, the legislature of a subject of the Federation of Russia may submit to the Duma a draft law on the ratification of an international treaty which is not yet in force as regards the Federation (Article 104 of the Constitution and Article 16 of the Law on International Treaties of the Federation of Russia). On the other hand, the subjects of the Federation are responsible, within the limits of their powers, for implementing treaties (Article 32 of the Law).

Following the winding-up of the USSR and the creation of the *CIS*,[51] it was agreed by the Agreement on the Creation of the CIS, and its statutes (Article 1), that the CIS has *no international powers* and that its organs are only *coordinating organs*. The council of Heads of State and the Council of Heads of Government of the Member States of the CIS adopt, by common accord (by consensus), decisions on the coordination of the foreign policy activities of members of the CIS.

- Horizontal division of powers

The President of the Federation

Pursuant to Article 80 of the Constitution, the President is the Head of State and the guarantor of the Constitution and human rights and freedoms. He protects the sovereignty, independence and integrity of the State. *He determines the fundamental directions to be followed by foreign policy and represents the Federation in its international relations*. He directs foreign policy, *negotiates and signs treaties* and the instruments of ratification, he *accepts the credentials* and *resignations of foreign representatives*, he appoints and dismisses Federal Ministers, including the Minister for Foreign Affairs, on a proposal from the President of the Government, he approves the Federation's military doctrine and, after consulting the committees and commissions of the chambers of the Federal Assembly, he appoints and recalls the *diplomatic representatives of the country in other countries* (Articles 83 and 86 of the Constitution). Pursuant to the law on international treaties, the President takes decisions relating to the organisation of negotiations and the signature of treaties, grants the corresponding powers and submits the relevant treaties for ratification. In the event of aggression or an imminent threat of aggression the President declares a state of emergency and notifies the Council of the Federation and the Duma (Article 87).

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[51] *Community of Independent States.*

Pursuant to Articles 5 and 20 of the Law on defence the President declares a state of war in the event of armed aggression. Decisions to send armed forces outside the Federation to take part in peace-keeping activities are also taken by the President on the basis of a decree of the Council of the Federation (Article 7 of the Law). Where it is proposed to take part in international coercive actions the President's decision must be taken in accordance with a ratified treaty in accordance with the federal law (Article 10 of the Law). The President forms and presides over the Security Council of the Federation. The Security Council examines issues of foreign policy, in particular those concerned with the maintenance of security, and prepares the decisions of the President.

The Government

Pursuant to Article 110 of the Constitution, the Government exercises the executive power. It takes the measures necessary to carry out the policy of the country (Article 114 of the Constitution). However, its acts may be repealed by the President where they are contrary to the Constitution or to federal laws (Article 115). Pursuant to the Law on International Treaties, within the spheres of its competence, the *Government decides to negotiate and sign treaties and presents them for ratification*.

According to Article 6 of the Law on Defence, the Government, within the limit of its powers, organises the implementation of the commitments provided for in defence treaties. It organises the control of the export of arms and weaponry, conducts international negotiations on military issues and determines the measures to strengthen confidence between States and to reduce the military threat and to create collective security. Part of the armed forces may be under joint command, in accordance with the treaties. Pursuant to the Law on the procedure for sending military and civil personnel to take part in peace-keeping and security activities, the Government takes the decision to send civilian personal to the frontiers to take part in a peace-keeping and humanitarian aid activities (Article 9).

The legislature: Council of the Federation and Duma

According to Article 104 of the Constitution and Article 14 of the Law on Treaties, treaties are ratified or denounced by a federal law adopted by the Duma. The law must be examined in the Council of the Federation. Article 15 of the Law on Treaties determines the treaties which must be submitted for ratification. These are:
(a) treaties whose implementation entails the amendment of federal laws in force or the enactment of new laws and those which establish rules other than those provided for by law;
(b) treaties having as their subject-matter the fundamental rights and freedoms of citizens;
(c) treaties concerning the territorial delimitation of the Federation with other States, including those relating to frontier crossings;
(d) treaties concerning the establishment of inter-State relations, the capacity of Russia's defence, questions of disarmament, the international control of disarmament and the guarantee of peace in international security;
(e) treaties relating to the Federation's participation in inter-State unions and international organisations, where these treaties envisage the transfer of some of the powers of the Federation or where they establish the adoption of legal decision which will be binding on the Federation; and
(f) treaties which the parties have agreed are to be ratified.

The two chambers also exercise indirect control over the conduct of foreign policy:
- they hear the President's message on the principal directions to be taken by foreign policy (Articles 84 and 100 of the Constitution) and the speeches of the directors of the foreign States;
- they *advise the President* on the appointment and recall of diplomatic representatives;
- they *receive information* from the Minister for Foreign Affairs where treaties have been concluded or have ceased to be effective;
- they may also give recommendations on the conclusion, cessation or suspension of treaties (Articles 8 and 35 of

the Law on International Treaties); and
- they may use the legislative initiative on the same subjects (Article 104 of the Constitution, Articles 16 and 37 of the Law on Treaties).

- The people
According to Article 32 of the Constitution, citizens are entitled to participate in *referenda*. The Law on Referenda of 1995 does not include foreign policy issues among those which are not to be submitted to a referendum. Consequently, the people may play a part in defining foreign policy by means of a referendum. The people may also take the initiative for a referendum. Where the Constitutional Court recognises that the statutory conditions are met, the President is required to hold a referendum (Articles 8 and 12 of the Law on Referenda).

Given such a complex division of powers, it was necessary to provide mechanisms to control compliance with the attribution of these powers. Article 125 of the Constitution, Chapter IX of the Federal Constitutional Law on the Constitutional Court and Article 34 of the Law on International Treaties provide that *the Constitutional Court is to resolve disputes as to* competence between the federal organs of the central power and also between the organs of State power of the Federation and those of its subjects in connection with the conclusion of treaties of the Federation where the disputed competence is defined in the Constitution of the Federation. Where the Court recognises that the act does not fall within the competence of the organ of the State power which promulgated it the act ceases to be effective as from the date indicated in the decision.

30. SLOVAKIA

30.1 Principles

- Identification
There are no specific provisions on the legal foundations and objectives of foreign policy. In the light of the general provisions of the Constitution, however, it is possible to conclude that a number of principles exist. Thus the preamble to the Constitution refers to the *inherent right of nations to self-determination* and to *the importance of continuous peaceful cooperation* with other democratic States. Article 1 provides that "the Republic of Slovakia is a sovereign and democratic State subject to the rule of law. It is not bound by any ideology or religion".

The essential document in which the objectives of foreign policy are set out, as required by the Constitution, is the programme of the Government (Article 113 of the Constitution).

Article 11 of the Constitution establishes the conditional superiority of treaties and other international agreements on human rights and fundamental freedoms over domestic law, provided that the international treaties and agreements guarantee greater rights and freedoms. Other treaties have priority over domestic laws provided that they contain a superiority clause to ensure preferential application. Where the provisions of a treaty are different from those of domestic laws they are applied directly. In certain cases, therefore, the principles established by international conventions must be observed when foreign policy is determined.

The values of democracy and respect for human rights have indirect influence of the country's foreign policy, since their observance is a condition of the country's admission to international organisations.

- Control mechanisms
First of all, a control is effected by international organisations. Thus, for example, pursuant to Article 8 of the Statute of the Council of Europe and Article 6 of the Charter of the United Nations, a country which fails to respect certain values may be excluded.

According to Article 86.g of the Constitution, Parliament may pass a *motion of censure* against the Government, including where it fails to carry out its foreign policy programme. A specific vote of no confidence in the Minister for Foreign Affairs, or any other member of the Government, may be passed in respect of his activities in connection with foreign policy.

30.2 Implementation

- The legislature
The National Council of the Republic of Slovakia is responsible for debating the Government's programme, for controlling its activities and for "negotiating" the *vote of confidence* to be adopted *vis-à-vis* the Government as a whole and its individual members (Article 86.g).

According to Article 86.e of the Constitution, Parliament is to *approve certain categories of treaties*: "international political treaties, general economic treaties and other international treaties which must be implemented by a law". Similarly, Parliament must consent to withdrawal from these treaties or to the withdrawal of reservations etc.

Furthermore, certain matters fall within the exclusive competence of Parliament. Article 86.c of the Constitution provides that Parliament is to give its consent, in the form of a Constitutional Law, to treaties of union between

Slovakia and other States and to the termination of such treaties. According to Article 86.k, *Parliament is to declare war* in the event of an armed attack against Slovakia or where its international obligations under common defence treaties so require. Lastly, Article 86.l provides that Parliament must consent to *troops being sent abroad*.

- The executive

The organ essentially empowered to elaborate the basic principles of foreign policy is the Government. These principles are incorporated in the Government's programme, which is approved by Parliament in a vote of confidence. According to Article 11.g of the Constitution, "*the Government shall decide collectively on basic questions of domestic and foreign policy".* Since 1993 *the Government has been authorised to conclude international treaties which do not require the approval of Parliament*. With the Government's consent, its members are authorised to conclude other treaties.

The *President* is not empowered to elaborate the basic principles of foreign policy. Within the framework of his constitutional powers (Article 102.a to r of the Constitution), the President conducts foreign policy as provided for in the Constitution. According to Article 102.a of the Constitution, he *represents* the Republic in international relations, he *negotiates and ratifies* the most important *international treaties*, he *receives and accredits* ambassadors (Article 102.b), and declares a state of war and war (Article 102.k).

- The people

Articles 93 to 100 of Chapter 5, Part 2 of the Constitution cover the circumstances in which a referendum may be held. Article 93.1 of the Constitution provides that *a constitutional statute on the formation of a union of the Slovak Republic with other States or its secession from such a union is to be confirmed by an obligatory referendum*.

A facultative referendum may be held either upon a resolution of Parliament or upon a petition submitted by 350,000 citizens. According to Article 95 the Constitution, the referendum is to be declared by the President. Article 93.3 provides that "no issue of fundamental rights, freedoms, taxes, duties or national budgetary matters may be decided by a referendum". Article 93.2 provides that "a referendum may also be held to determine crucial questions of public interest". The President does not declare a referendum until he has examined whether the constitutional conditions for a referendum are met. Furthermore, Article 27.1 of the Constitution establishes a *right of petition*.

As a general rule there is no control of the conduct of foreign policy. In the event of a *conflict as to competence*, however, *the problem will be resolved by the Constitutional Court* (Article 126 of the Constitution). Similarly, where a problem arises as to the interpretation of the constitutional provisions on competence in the sphere of foreign policy, the Constitutional Court may give a generally binding interpretation (Article 128.1 of the Constitution).

31. SLOVENIA

31.1 Principles

- Identification
According to the Constitution, laws and regulations must conform with treaties and *the generally accepted principles of international law*. The Law on Foreign Affairs regulates the conduct of foreign affairs. Values such as *democracy, the rule of law and the protection of human rights and fundamental freedoms* are among the principles forming the basis of the State, according to Constitution, which, as the supreme legal act, is binding on all authorities.

Slovenia's intention to take part in the process of European integration and to become an associate member of the European Union influence its legislation, in the sense of seeking to achieve harmonisation with European standards.

- Control mechanisms
The Constitutional Court decides upon the conformity of laws and regulations with ratified treaties and the general principles of international law. It also has jurisdiction to decide any individual complaint alleging a violation of human rights and fundamental freedoms by personal acts. Finally, it may also be requested to rule on the *conformity with the Constitution of a treaty which is in the process of being adopted.* Its opinion is binding on Parliament. The Constitutional Court has not yet ruled on whether it has jurisdiction to evaluate the conformity with the Constitution of a treaty which has already been ratified by statute. However, it has already declared that it has jurisdiction to evaluate the conformity with the Constitution of treaties ratified by regulation.

Judicial review of actions taken within the framework of foreign policy is possible only in the event of error, crime or tort. Complaints may also be lodged against the Prime Minister or any other Minister and against the President of the Republic.

31.2 Implementation

- The legislature
Parliament defines the basic principles of foreign policy. It ratifies treaties. It adopts resolutions, recommendations, opinions and decisions and it *appoints and dismisses* members of Slovenia's permanent delegations to international organisations. The Foreign Affairs Committee of Parliament confirms the initiative for concluding a treaty and gives its suggestions. In the *negotiating stage the delegation reports to the Committee*. Following the signature of the treaty the Committee decides whether or not to propose that Parliament should ratify it. Parliament may also initiate the procedure for the amendment or *denunciation* of an international treaty.

- The executive
The *President* has a *representative* function. He *accredits and revokes the accreditation of* Slovenia's ambassadors to foreign countries and *accepts the credentials* of foreign represents. He issues instruments of ratification.

The *Government* and the Minister for Foreign Affairs ensure that foreign policy is formulated and implemented in conformity with the principles defined by Parliament. The Government takes the initiative for the signature of international agreements and *assumes responsibility for the negotiations*. It ratifies protocols, programmes and other similar instruments which do not contain additional obligations and which are concluded for the purpose of implementing treaties which have already been concluded. The Government is accountable to Parliament.

- The people

Citizens may initiate a procedure for amending the Constitution and *propose laws*. In certain cases (where a large number of citizens have signed a petition to that effect) Parliament must declare a *referendum*. There are very few issues which *cannot be submitted to a referendum*. One such issue is the *implementation of a treaty*. Parliament may also hold a consultative referendum on an issue of major importance. The results of such a referendum are binding.

32. SOUTH AFRICA

32.1 Principles

- Identification
The constitutional and institutional changes that took place in South Africa since 1994 provides for important changes in the foreign policy formulation and implementation processes[52]. The Constitution does *not include any specific foreign policy guidelines*. However it provides a *framework for procedural matters and policy decisions.*

Relevant constitutional provisions that have a bearing on foreign policy matters include the following:
a) The founding provisions in Section 1 (Act 108 of 1996): The Republic of South Africa is one, sovereign, democratic State founded on the following values: human dignity, the achievement of equality, and the advancement of human rights and freedoms; non racialism and non sexism; supremacy of the Constitution and the rule of law; universal suffrage, regular elections and a multi-party system.
b) The supremacy of the Constitution (Section 2).
c) The Bill of rights (Section 7-39).
d) International agreements (Section 231): The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.
e) Customary international law (Section 232): Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.
f) Application of international law (Section 233): When interpreting any legislation, every Court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

- Control mechanisms
The position of the judiciary in South Africa has also changed considerably since 1994. This is the result of important changes to the constitutional framework that strengthens the role of the judiciary. First of all, as provided for in the Constitution (Act 108 of 1996, Section 2), the Constitution is the supreme law of the Republic, and any conduct or law inconsistent with the Constitution is invalid. The second change involves the inclusion of the rule of law principle as a provision in the Constitution (Section 1 c). The third change brought about in the Constitution is the creation of a Constitutional Court. The Constitutional Court is the highest court in constitutional matters (Section 167 3 a). The fourth important change is the limitation of the sovereignty of the Parliament. The Constitution provides for the rejection of any law of Parliament by the Constitutional Court which is inconsistent with the Constitution. Such a decision or any other decision by the judiciary is binding on all persons or organs of State to which it applies (Section 165).

32.2 Implementation

According to Section 231 (1) of the Constitution, the negotiating and signing of international agreements is the responsibility of the national executive.

An international agreement binds the Republic only after it has been approved by both the National Assembly and the National Council of Provinces, unless it is one of the following agreements: international agreements of

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[52] *The constitutional changes that took place in South Africa include the replacement of the Constitution of the Republic of South Africa (Act 110 of 1983, with the transitional Constitution (Constitution of the Republic of South Africa of 1993, Act 200 of 1993). This was followed by the acceptance of a final Constitution of the Republic of South Africa 1996 (Act 108 of 1996).*

technical, administrative or executive nature and agreements which do not require either ratification or accession, entered into by the national executive, bind the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

When the African National Congress (ANC) took power in 1994 it envisaged a more active role for Parliament in the foreign policy sphere. The rules of Parliament were changed to give parliamentary portfolio committees a more direct and active role in the process of foreign policy formulation. However, the role of the Parliament remains still very limited in this field.

33. SPAIN

33.1 Principles

- Identification
There are very few principles which guide the foreign policy of the State. The Constitution mentions only the principle of the *peaceful resolution of disputes* and the principle of *cooperation between countries* (Articles 1 and 2 of the Charter of the United Nations). Moreover, it only does so in the preamble, which undermines their legal force. In addition, the terms employed are very general.

However, it is possible to find other articles which may be regarded as indirect guidelines for foreign policy:
(a) Article 11.1 of the Constitution authorises the State to *conclude treaties on dual nationality with Iberian-American countries* or countries which have or had special links with Spain. This authorisation was not constitutionally necessary and must therefore be regarded as designed to promote political action in that direction.
(b) Article 13.2 refers to the treaties whereby the nationals of the signatory countries may be granted the *right to vote in municipal elections*. The concession must be granted on a reciprocal basis.
(c) Article 42 requires the public powers to ensure the *protection of the economic and social rights of Spanish workers abroad.*
(d) Lastly, Article 56, which provides that the King is the supreme representative of the State in international relations, ascribes particular importance to relations with "the nations of its historical community". This article has been interpreted as constituting encouragement on the part of the drafters to develop relations with Latin America. It is important to note that the role of the King is purely symbolic.

The Constitution makes no reference to values such as *democracy, human rights or the rule of law* as a basis for foreign policy, but Article 95.1 of the Constitution, which expressly prohibits the signature of treaties containing provisions contrary to the Constitution, and the importance of these values in domestic law, argue *in favour of a foreign policy which seeks to satisfy the principles and values established in the Constitution*. Legal rules having less than constitutional force also play a part in defining the legal foundations of foreign policy, particularly as regards the organisation of the State's international activities.

According to Article 96.1 of the Constitution, properly concluded international treaties form part of the domestic legal programme once they have been officially published in Spain. According to Article 96.1 treaties cannot be amended except by the mechanisms provided for therein.

- Control mechanisms
The *Constitutional Court* may intervene in the final stage of the approval procedure to evaluate a treaty's conformity with the Constitution (Article 92).

33.2 Implementation

- The legislature
The two chambers intervene in different ways, and different conditions apply as to the majority required, depending on the treaty in question. According to Articles 93 and 94 of the Constitution, *treaties must be accepted by both chambers* where:
(a) they authorise international institutions or organisations to exercise powers deriving from the Constitution;
(b) they are of a political or military nature, they concern the integrity of the national territory or rights and fundamental freedoms, they entail financial obligations or require an amendment of or derogation from the law or require special measures in order to be implemented. The chambers must be *notified immediately of all other*

treaties or agreements (Article 94.2).

Foreign policy lies within the realm of Government powers. Another specificity of the Spanish system is that Parliament, by its authorisation to conclude treaties as well as by its supervision of their implementation, plays an active role in this domain, and may even act as a driving force in such matters.

- The executive

The Constitution of 1978 democratised the implementation of foreign policy. Although the King is the supreme representative of the State in international relations (Article 56.1 of the Constitution), the Government is given the role of principle administrator of foreign policy. Moreover, a range of controls has been established: these may be political, and exercised in Parliament, or legal, and exercised in the Constitutional Court.

Article 63 of the Constitution provides that *the King* is to *express the State's agreement to be bound by international treaties*. The majority opinion among legal writers holds that this reference is only to agreements which have been approved by Parliament. The King *accredits ambassadors* and other diplomatic representatives and *declares war and peace* with the *prior authorisation of Parliament*.

The initiative for concluding treaties is exclusively within the competence of the *Government*, which, according to Article 97, "*directs domestic and foreign policy*". The Minister of Foreign Affairs is responsible for negotiating treaties.

- The people

Article 87 *prohibits direct legislative initiatives* by citizens in international matters. However, there is nothing to prevent a *referendum* being held in such circumstances. Thus a referendum was held in 1982 in which citizens were asked whether Spain should remain a member of NATO.

- Decentralised authorities

Article 149.1.3 provides that international relations are among the matters for which the State has exclusive competence. Following an initial literal interpretation of this article, which was severely criticised by legal writers, the Constitutional Court reduced the scope of the exclusive powers of the State. The reasoning is that Spain's integration in the world, and in the European Union in particular, has the effect that international relations may affect any matter, which might in practice deprive the powers granted by the Constitution to the *Autonomous Communities* of their importance.

The Autonomous Communities may in certain circumstances, without weakening the Government's prerogatives, *request the Government to negotiate treaties*. However, they cannot attempt to obtain international status *or to conclude treaties which are legally binding on the State*. On the other hand, the Government is *required to notify the Communities of the negotiation and signature of a treaty which might have repercussions* in areas which are of particular concern to the Communities.

34. SWITZERLAND

34.1 Principles

- Identification

The *traditional axioms of foreign policy* are:
(a) *neutrality*. This is the only one mentioned in the Constitution (in the provisions on the respective tasks of the legislature and the executive, not in those on foreign policy).[53] The reference is to the principle of non-interference in war between two States, which has been amended (Switzerland may participate in multilateral sanctions or in actions against threats which cannot be removed by cooperation).
(b) *solidarity*. This is humanitarian solidarity and solidarity by economic and social cooperation. This principle attenuates the principle of neutrality so that Switzerland can avoid being classified as an egoistic State.
(c) *universality*. This relates to the maintenance of diplomatic relations with all States, of contacts in matters of cooperation and adherence to international organisations of a universal nature.
(d) *availability*. This refers to Switzerland's good services being offered to States or international organisations which request them,

Article 2 of the Constitutions sets out *four aims* of the Constitution, which must be the aims of both domestic and foreign policy:
(a) to ensure the *independence* of the country;
(b) to maintain *peace and order* within the country;
(c) to protect the *freedom and rights* of confederates; and
(d) to increase the *common prosperity* of confederates.

In its Report on foreign policy in the 1990s the Federal Council endeavoured to define the aims of its foreign policy action with express reference to Article 2 of the Constitution, with the intention of giving a new lease of life to the above principles. Five axes were set out:
(a) the maintenance and promotion of security and peace,
(b) commitment in favour of human rights, democracy and the principles of the rule of law,
(c) growth in common prosperity,
(d) the promotion of social cohesion, and
(e) the preservation of the natural environment.
Here it is a matter of measures concerned with the implementation of foreign policy rather principles which are binding on those responsible for defining it.

Treaties form an integral part of domestic law. Insofar as they establish principles or objectives of foreign policy, they are therefore *binding*. However, Switzerland is not a party to international organisations of integration. However, the following exceptions should be mentioned: the UN - from the political point of view Switzerland follows the directions laid down by the UN, although it is not a member; and the European Union - "Eurocompatibility" is also one of the principles which in practice influence the determination of Swiss foreign policy; and the Council of Europe. Values such as democracy, human rights and the rule of law are binding on the organs of the State, including where they deal with international matters.

[53] *Article 8 Chapter 6 and Article 102 Chapter 9.*

- Control mechanisms
Mechanisms to ensure the control and protection of human rights are provided for in domestic law or in treaties. The violation of a treaty may be relied on before any court, provided that the provisions is self-executing, which does not apply, for example, in the case of economic and social rights.

An act which falls within the sphere of foreign policy (authorisation to ratify treaties) may be challenged before the Federal Court on the ground that it violates a political or constitutional right. However, whether or not such a control is available depends on the nature of the contested act. Article 113.3 *prohibits the Court from reviewing the constitutionality of federal laws* and there is no autonomous limit to the revision of the Constitution. Authorisation to ratify a treaty decided following popular consultation cannot be reviewed by the Court.

34.2 Implementation

- The legislature
The conclusion of treaties.
The General Assembly is competent to *conclude treaties* and alliances Article 85 Chapter 6 and Article 102 Chapter 8). In principle, the executive negotiates and signs treaties, *although the legislature authorises their ratification*.

Foreign policy directives.
The fundamental principles of foreign policy are formulated by the Federal Council. Admittedly, its messages are presented to Parliament, but they do not require *formal approval*.

The adoption of unilateral acts.
There is no *a priori* limit. Since Article 113.3 requires the Federal Court to apply treaties ratified by Parliament, it may be inferred that those *denounced* by Parliament can no longer be applied, even if the Federal Council has not implemented such a decision.

- The executive
The General Assembly is empowered to conclude treaties and alliances and the *Federal Council is responsible for conducting foreign relations* (Article 85 Chapter 6 and Article 102 Chapter 8). In principle *the executive negotiates and signs treaties*, although the legislature authorises their ratification. However, *the Federal Council may only ratify* agreements in simplified form (treaties of minor importance, provisional treaties, treaties which do not create new obligations). The Federal Council may only *denounce treaties*, including those ratified by the Federal Assembly, and *withdraw reservations* without Parliament's assistance.

The *fundamental principles of foreign policy are formulated by the Federal Council*. Admittedly, its messages are presented to Parliament, but they do not require formal approval. The Government defines and implements foreign policy It conducts Switzerland's external relations.

The regime is collegiate in the sense that the Head of State is *primus inter partes* and plays no particular role in formulating foreign policy.

- The people
The ratification of certain international documents, depending on the nature of the treaty, is sometimes submitted to a *referendum*. Switzerland has a *popular initiative* in the sense that a sufficient number of citizens may propose a constitutional amendment. Thus there have recently been a number of popular initiatives designed to secure a stricter immigration policy.

There are two kinds of referendum: an obligatory referendum, which is addressed to the people and the cantons, and a facultative referendum, which is addressed only to the people and which is held only where requested by a sufficient number of citizens. *The issue of accession to collective security organisations or to supranational communities* is determined by the people and the cantons, that is to say, it is submitted to an obligatory referendum. *The ratification of treaties of fixed duration, accession to an international organisation or the ratification of treaties entailing a multilateral unification of the law or of other treaties* may, upon a decision of the Federal Assembly, be submitted to a referendum.

- Decentralised authorities

Pursuant to Article 8 of the Constitution, the Confederation alone is competent to conclude treaties and alliances with foreign States. However, Article 9 provides for an exception in favour of the cantons, but one which is relatively unimportant. The cantons may *conclude treaties of local importance or of lesser importance and they must be approved by the Federal Council*, which may oppose their ratification or conclude them on its own behalf where they are of national importance. Pursuant to the draft Constitutional reform currently in progress, the cantons will be empowered to conclude treaties within the spheres of their competence. This provision therefore appears less restrictive than the present Article 10.

35. SWEDEN

35.1 Principles

- Identification
The conduct of foreign policy and the definition of its governing principles are not the subject of legal provisions. Even Sweden's traditional policy of *neutrality*, which may be summarised as "non-participation in alliances in peacetime with a view to remaining neutral in the event of war", has no legal basis in either domestic law or international law. Furthermore, international law does not form part of domestic law unless it has been received in the internal legal order.

35.2 Implementation

- The legislature
According to Article 6 of the Instrument of Government, the Government, *before adopting a decision, must confer with the Foreign Affairs Advisory Council on all foreign policy matters of major importance*.

According to Article 1 Chapter 10 of the Instrument of Government, the Government may not conclude any *treaty* without the *consent of Parliament* if the agreement presupposes the amendment or abrogation of a law or the enactment of a new law, or if it otherwise concerns a matter which is for Parliament to decide. Similarly, without Parliament's approval the Government may not conclude any other treaty giving rise to international obligations for Sweden if the agreement is of major importance. The same rules apply to the commitment of the Realm to any other international obligation and to the denunciation of an agreement or international commitment.

- The executive
The King represents Sweden. He has *symbolic and ceremonial duties*. As Head of State he is kept informed by the Government concerning the affairs of the Realm

The Government is responsible for determining foreign policy under the political, legislative and financial control of Parliament. Pursuant to Article 1 Chapter 10 of the Instrument of Government, the Government *concludes treaties* with other States and with international organisations. According to Article 9, it may *commit the armed forces* in order to repel an attack on the Realm. Otherwise the armed forces can be committed only with the agreement of Parliament, unless a law so provides or an obligation to that effect is envisaged in a treaty approved by Parliament. No declaration of war may be made without the consent of Parliament except in the event of an armed attack. However, the Government may authorise the use of force in accordance with international law to prevent a violation of Swedish soil.

- The people
The people may be consulted by referendum on foreign policy matters, as in the case of the *referendum* on Sweden's accession to the EU.

36. TURKEY

36.1 Principles

- Identification
In the preamble to the Constitution, which has the same legal force as the Constitution itself, the expression of the founder of modern Turkey, Kemal Atatürk, "peace at home, peace in the world" is repeated. According to Article 16, the fundamental rights and freedoms of aliens may be restricted by law in a manner consistent with international law. *Article 92 limits Parliament's power to declare war or to send armed forces abroad to situations deemed legitimate under international law*. According to Article 90, international agreements which have entered into force have the same force as law. To this extent they may also influence the determination of the principles or aims of foreign policy.

Democracy, the rule of law and respect for human rights are among the essential principles of the Turkish Republic set out in Article 2 of the Constitution and the conduct of foreign policy must therefore also respect these principles.

- Control mechanisms
There is no specific control mechanism to ensure respect for the above-mentioned principles in foreign policy. There is no provision for instituting proceedings before the *Constitutional Court* for a review of the constitutionality of treaties which have already been ratified.

36.2 Implementation

- The legislature
Parliament contributes to the determination of foreign policy by its power to *ratify treaties*. However, *certain treaties take effect without Parliament's approval*. This applies to agreements regulating economic, commercial and technical relations and covering a period of no more than one year, provided that they do not entail any financial commitment by the State and do not adversely affect the status of individuals or the property rights of Turkish citizens abroad. *Parliament must be notified of such agreements* within two months of their promulgation. Similarly, agreements concerning the implementation of a treaty which has already been ratified and economic, commercial, technical or administrative agreements concluded on the basis of an authorisation by law do not require parliamentary approval.

Parliament may not *adopt legally binding foreign policy directives*. However, it may pass a resolution expressing its views, but without legal force. Furthermore, Parliament cannot take unilateral action in the field of foreign policy. Parliamentary *control* takes the form of questions, general debates, interpellation and parliamentary inquiries.

- The executive
The conduct of foreign policy is the responsibility of the *Council of Ministers*. The Minister for Foreign Affairs plays a particularly important role in determining the principles of foreign policy.

The *President* (Article 104) *ratifies and promulgates* treaties and *accredits* Turkey's representatives in other countries; however, these are formal powers exercised jointly with the Council of Ministers.

37. UKRAINE

37.1 Principles

- Identification
Article 8 of the Constitution of Ukraine[54] provides that the principle of the rule of law is recognised and effective in Ukraine.

According to Article 18 of the Constitution, the foreign political activity of Ukraine is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial cooperation with members of the international community, according to generally acknowledged principles and norms of international law.

In accordance with Article 9 of the Constitution, international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine[55], are part of the national legislation of Ukraine. The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution of Ukraine.

According to Article 26 of the constitution, foreigners who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, subject to the exceptions established by the Constitution, laws or international treaties of Ukraine.

The use of existing military bases on the territory of Ukraine for the temporary stationing of foreign military formations is possible on the terms of lease, by the procedure determined by the International treaties of Ukraine ratified by the Verkhovna Rada of Ukraine (Provision 14 of Chapter XV "Transitional Provisions" of the Constitution of Ukraine).

- Control mechanisms
The Authorised Human Rights Representative of the Verkhovna Rada of Ukraine (the Parliamentary Ombudsman) exercises parliamentary control over the observance of constitutional human and citizens' rights and freedoms (Article 101 of the Constitution, Article 1 of the *Authorised Human Rights Representative of the Verkhovna Rada of Ukraine Act*).[56]

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[54] The Constitution of Ukraine was adopted by the Verkhovna Rada of Ukraine on 28 July 1996.

[55] Parliament of Ukraine.

[56] The *Authorised Human Rights Representative of the Verkhovna Rada of Ukraine Act* was adopted by Verkhovna Rada of Ukraine 23 December 1997.

The Constitutional Court of Ukraine provides opinions on the conformity with the Constitution of Ukraine of international treaties of Ukraine that are in force, or international treaties submitted to the Verkhovna Rada for granting agreement on their binding nature (Article 151 of the Constitution of Ukraine and Article 13 of the *Constitutional Court of Ukraine Act*).[57]

37.2 Implementation

- The legislature

According to Article 85 of the Constitution, the authority of the Verkhovna Rada of Ukraine comprises:

- determining the principles of domestic and foreign policy;
- hearing annual and special messages of the President of Ukraine on the domestic and foreign situation of Ukraine;
- declaring war upon the submission of the President of Ukraine and concluding peace, approving the decision of the President of Ukraine on the use of the Armed Forces of Ukraine and other military formations in the event of armed aggression against Ukraine;
- confirming decisions on granting loans and economic aid by Ukraine to foreign states and international organisations and also decisions on Ukraine receiving loans not envisaged by the State Budget of Ukraine from foreign states, banks and international organisations, and exercising control over their use;
- approving decisions on providing military assistance to other states, on sending units of the Armed Forces of Ukraine to another state, or on admitting units of armed forces of other states on to the territory of Ukraine;
- granting consent to the binding character of international treaties of Ukraine within the term established by Law and denouncing international treaties of Ukraine;
- hearing annual reports of the Authorised Human Rights Representative on the situation of the observance and protection of human rights and freedoms in Ukraine.

In accordance with Article 92 of the Constitution, the following are determined exclusively by the laws of Ukraine:

- human and citizens' rights and freedoms, the guarantees of these rights and freedoms; teh main duties of the citizen;
- citizenship, the legal personality of citizens, the status of foreigners and stateless persons;
- the principles of foreign relations, foreign economic activity and customs;
- the legal regime governing the state border.

The procedure for deploying units of the Armed Forces of Ukraine to other states as well as the procedure for admitting and the terms for stationing units of armed forces on the territory of Ukraine are established exclusively by the laws of Ukraine (Provision 2 part 2 Article 92 of the Constitution of Ukraine).

- The President

The president of Ukraine is the Head of State and acts in its name. The President of Ukraine is the guarantor of state sovereignty and territorial indivisibility of Ukraine, the observance of the Constitution of Ukraine and human and citizens' rights and freedoms (Article 102 of the Constitution of Ukraine).

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[57] The *Constitutional Court of Ukraine Act* was adopted by Verkhovna Rada 16 October 1996.

In accordance with Article 106 of the Constitution of Ukraine, the President of Ukraine:

- ensures state independence, national security and the legal succession of the state;
- represents the state in international relations, administers the foreign political activity of the State, conducts negotiations and concludes international treaties of Ukraine;
- adopts decisions on the recognition of foreign states;
- appoints and dismisses heads of diplomatic missions of Ukraine to other states and to international organisations; accepts credentials and letters of recall of diplomatic representatives of foreign states.

- The executive
According to article 116 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine:

- ensures the state sovereignty and economic independence of Ukraine, the implementation of domestic and foreign policy of the State, the execution of the constitution and the laws of Ukraine, and the acts of the President of Ukraine;
- takes measures to ensure human and citizens' rights and freedoms;
- organises and ensures the implementation of the foreign economic activity of Ukraine.

In accordance with Article 15 of the *International Treaties of Ukraine Act*, the Ministry of Foreign Affairs of Ukraine is responsible for general supervision over execution of international treaties of Ukraine.

- The people
According to Article 5 of the Constitution of Ukraine, the people are the bearers of sovereignty and the only source of power in Ukraine. The people exercise power directly and through bodies of state power and bodies of local self-government.

In accordance with Article 69 of the Constitution, the expression of the will of the people is exercised through elections, referenda and other forms of direct democracy.

In accordance with Article 73 of the Constitution, issues of altering the territory of Ukraine are resolved exclusively by an All-Ukrainian referendum.

38. UNITED STATES OF AMERICA

The Judiciary and Foreign Affairs in the United States

This is a vast subject in the United States, and there have been numerous cases testing whether one branch of government or another has exceeded its constitutional powers in the area of foreign affairs. The opinion of the United States Supreme Court in *Baker v. Carr* 369 U.S. 186 (1962) summarises the extent to which the field of foreign relations is thought to raise "political questions" unsuitable for judicial resolution in the United States:

> "Foreign relations: There are sweeping statements [in previous cases] to the effect that all questions touching foreign relations are political questions. Not only does resolution of such issues frequently turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature; but many such questions uniquely demand single-voiced statement of the government's views. Yet it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. Our cases in this field seem invariably to show a discriminating analysis of the particular question posed, in terms of the history of its management by the political branches, of its susceptibility to judicial handling in the light of its nature and posture in the specific case, and of the possible consequences of judicial action. For example, though a court will not ordinarily inquire whether a treaty has been terminated, since on that question "governmental action [must] be regarded as of controlling importance", if there has been no conclusive "governmental action" then a court can construe a treaty and may find it provides the answer. Though a court will not undertake to construe a treaty in a manner inconsistent with a subsequent federal statute, no similar hesitancy obtains if the asserted clash is with state law.
>
> "While recognition of foreign governments so strongly defies judicial treatment that without executive recognition a foreign state has been called "a republic of whose existence we know nothing", and the judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory, once sovereignty over an area is politically determined and declared, courts may examine the resulting status and decide independently whether a statute applies to that area. Similarly, recognition of belligerency abroad is an executive responsibility, but if the executive proclamations fall short of an explicit answer, a court may construe them seeking, for example, to determine whether the situation is such that statutes designed to assure American neutrality have become operative. [Still] again, though it is the executive that determines a person's status as representative of a foreign government, the executive's statements will be construed where necessary to determine the court's jurisdiction. [Similar] judicial action in the absence of a clearly authoritative executive declaration occurs in cases involving the immunity from seizure of vessels owned by friendly foreign governments."

Many of the most interesting court cases in the United States involve a claim that either the President or congress has exceeded the appropriate foreign affairs powers of its branch of government, and that action by the other branch is needed. In short, these are "separation of powers" or "checks and balances" cases. Some cases worth special mention are the following:

Youngstown Sheet and Tube Co. v. Sawyer [The Steel Seizure Case] 343 U.S. 579 (1952): the Supreme Court struck down as a violation of separation of powers principles President Harry Truman's seizure and operation of most of the countries' steel mills during the Korean War. President Truman argued that an impending steelworkers' strike threatened the war effort and that a variety of his powers allowed him to seize the steel mills in these circumstances. The Supreme Court ruled that the President could not act here without congress authorisation. And although the majority disagreed among themselves about the precise rationale, the case stands

for the proposition that the U.S. Constitution puts significant and enforceable limits on presidential powers even in time of war.

In *Dames & Moore v. Regan* 453 U.S. 654 (1981), the Supreme Court upheld the President's suspension of claims against Iran as part of the resolution of a hostage crisis, rejecting a claim that the President had exceeded his constitutional powers.

A number of interesting cases have been brought challenging the President's use of armed forces abroad. The proper roles of Congress and President in committing such forces are deeply controversial in the United States, and particular decisions to do so are similarly controversial. During the Vietnam War, a number of cases were brought challenging the constitutionality of the President's commitment of forces there. Some lower courts held that the question was a non-justiciable political question; others held that Congress had done enough to authorise the commitment of forces. The Supreme Court never decided the questions, but some Justices dissented. Perhaps the most important point to note is that the cases were brought and were seriously considered by the courts. See, for example, *Mora v. McNamara* 389 U.S. 934 (1967).

An interesting more recent case was brought in late 1990, following Iraq's invasion of Kuwait, seeking to prevent President Bush from launching an offensive strike against Iraq without explicit congressional authorisation. In their book *Constitutional Law* (13th edition 1997), Professors Gerald Gunther and Kathleen Sullivan summarise what happened:

> "The trial court dismissed the suit for lack of "ripeness", but agreed with the major contentions in a memorandum submitted by a group of law professors: the Court stated that it had "no hesitation in concluding that an offensive entry into Iraq by several hundred thousand United States servicemen could be described as a "war" within the meaning of the [Constitution]. To put it another way: the Court is not prepared to read out of the constitution the clause granting to the Congress, and to it alone, the authority 'to declare War'". *Dellums v. Bush* 752 F. Supp. 1141 (D.D.C. 1990). In the ensuing weeks, the constitutional debates intensified and, when the issue reached the floor of Congress, there was widespread agreement that congressional authorisation was necessary if the nation was to embark on offensive warfare. On January 12, 1991, Congress, by a relatively narrow margin, adopted a Joint Resolution authorising the President "to use United States Armed Forces" pursuant to the U.N. Resolution. American aerial warfare against Iraq commenced soon after; the ground war against Iraq began on Feb. 24, 1991, and ended 100 hours later."